

Opinion No. 49-5199

March 1, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Tom C. Cox, Inspector Motor Transportation Division State Corporation
Commission Santa Fe, New Mexico

{*20} I have your letter of February 10, 1949, requesting the opinion of this office as to whether or not wreckers and ambulances are subject to regulation by the State Corporation Commission.

Contract motor carriers are defined by Section 68-1314 of the New Mexico 1941 Compilation, pocket supplement, which read as follows:

"(a) The term 'contract motor carrier of property,' when used in this act, shall mean any person engaged in the transportation by motor vehicle of property for hire and not included in the term 'common motor carrier of property' as hereinbefore defined. (b) The term 'contract motor carrier of passengers' when used in this act, shall mean any person engaged in the transportation by motor vehicle of persons for hire and not included in the term 'common motor carrier of passengers' as hereinbefore defined."

Since neither ambulances nor wreckers operate over regular routes, neither could be considered as a common carrier as defined by Section 68-1302. However, a wrecker is engaged in the transportation by motor vehicle of property for hire, and an ambulance is engaged in the transportation by motor vehicle of persons for hire, and it is therefore my opinion that both are contract carriers and subject to the rules and regulations of the Motor Carriers Act, except insofar as they {*21} operate exclusively within the limits of municipalities, and are, therefore, subject to regulation by the State Corporation Commission. In addition to the plain wording of Section 68-1314, such operations are covered by the policy section of the Motor Carrier Act which is Section 68-1301 (b) of the 1941 Compilation, and which provides as follows:

"(b) It is hereby declared to be the purpose and policy of the legislature in enacting this law to confer upon the commission the power and authority to make it its duty to supervise and regulate the transportation of persons and property by motor vehicle for hire upon or over the public highways of this state in all matters whether specifically mentioned herein or not so as to: (1) relieve the existing and all future undue burdens on the highways arising by reason of the use of the highways by motor vehicles; (2) protect the safety and welfare of the traveling and shipping public in their use of the highways; (3) carefully preserve, foster and regulate transportation and permit the coordination of transportation facilities."

The regulation and control of ambulances and wreckers is a necessary element in the protection of the safety and welfare of the traveling public in its use of the highways.

You further ask whether garages operating wreckers owned by them which bring damaged vehicles to their shops for repair should be exempt. If the garage owner and the owner of the damaged vehicle have a pre-existing repair agreement, then the transaction is merely one of delivery and incidental to the repair job, and the garage would not be considered a contract carrier. However, if a repair agreement is entered into after the tow is completed, or at the scene of the accident, then there could be no exemption, as the wrecker operator undertook the matter as a wrecker tow, and not as incidental to a repair job on the vehicle. Each case of this nature must be judged on its particular facts, and it is impossible to give a definite rule which would be all inclusive.

Hearse service in connection with the transportation of deceased persons to the mortuary would normally be incidental to the business of the mortuary and not a common carrier transaction. The opposite is true of ambulance service, which has as its object only the transportation of persons by motor vehicle for hire.

I trust the foregoing is a sufficient answer to your inquiry.