

Opinion No. 49-5211

April 25, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Corporation Commission Santa Fe, New Mexico. Attention: Dan Sedillo

{*35} We are in receipt of your inquiry regarding the application of the McConnell Drilling Corporation for a Contract Carrier Permit.

It is our understanding that the McConnell company has a basic contract with Stanolind Oil and Gas Company to drill a well in Rio Arriba County under the terms of which the oil company assumes the responsibility of delivering pipe, packing mud, cement, and all other materials used in the drilling of the well to the site. Certain difficulties have arisen in acquiring a common carrier to move the materials and supplies at the times necessary. To avoid the difficulties McConnell and the oil company have entered into a supplemental contract under the terms of which McConnell has agreed to transport all of the material and supplies from an adjacent area to the site of the well.

Further, the McConnell corporation has an additional contract with Southern Union Production Company to drill a well in Rio Arriba County under the terms of which the McConnell Drilling Corporation is to use its motor equipment to move both the drilling equipment and various supplies and materials to be used in the drilling operation to a place or places designated by the Southern Union Production Company.

It is our understanding that two basic questions have been presented. First, conceding that the evidence adduced at the hearing justifies the Commission in issuing the contract carrier permit to McConnell to haul for Stanolind, is it necessary that all parties in interest be notified and a supplemental hearing be held on the second contract with Southern Union Production Company; or is it sufficient that the McConnell Drilling Company merely file the additional contract without notice to any of the parties.

The second question is whether the McConnell Corporation can haul commodities other than those listed in the basic contract upon which the original contract carrier permit was issued.

Section 68-1317 of the New Mexico Statutes Annotated (Supplement) provides in its pertinent part: "No permit shall be granted unless applicant has filed with the Commission at least one but not more than five valid legal contracts covering the transportation proposed and establishes by competent evidence that the privilege sought will not impair the efficiency of public service of any certificated common carrier then adequately serving the same territory". The limitation of five contracts is to distinguish between those who are common carriers and those who are contract carriers. When there are more than five applications the legislature has made a

determination that such persons are attempting to serve the general public and are common carriers.

Although the Federal Motor Carriers Act is not identical with the New Mexico Act, we believe it pertinent to refer to certain decisions regarding contract carriers since it is a common basic problem. The Interstate Commerce Commission has repeatedly held that contract carriers are limited in the commodities to be transported to the commodities and to the geographical area which the original carrier authority covers. It is the practice of the Interstate Commerce Commission to require only the filing of the additional contracts without notice to any other interested parties and without {36} any supplemental hearing. To require additional hearings for each contract would place an absurd and unreasonable burden on the Commission and on the carriers.

This problem is fully covered in the case of Noble vs. United States, a hearing before a special three man federal court, 3 Fed. Carriers Cas., page 2149. Basic theories of the restrictions of contract carriers as to the commodities and area to be served and supplemental contracts are fully set forth. The same case, Noble vs. United States, was affirmed in the U.S. Supreme Court, 3 Fed. Carrier Cases 2255, where the court said:

"We agree. An accurate description of the 'business' of a particular contract carrier and the 'scope' of the enterprise may require more than a statement of the territory served and the commodities hauled. An accurate definition frequently can be made only in terms of the type or class of shippers served. Unless the words of the Act are given that interpretation, permits under the 'grandfather' clause may greatly distort the prior activities of the carrier. He who was in substance a highly specialized carrier for a select few would be treated as a carrier of general commodities for all comers, merely because he had carried a wide variety of articles. That would make a basic alteration in the characteristics of the enterprise of the contract carrier -- a change as fundamental as we thought was effected by a disregard of the nature and scope of the holding out of the common carrier in United States v. Carolina Freight Carriers Corp, 315 U.S. 475. If the business of the contract carrier were not defined in terms of the type or class of shippers served, that 'substantial parity between future operations and prior bona fide operations' which is contemplated by the Act (citing cases) would be frequently disregarded. The 'grandfather' clause would be utilized not to preserve the position which the carrier had obtained in the nation's transportation system, but to enlarge and expand the business beyond the pattern which it had acquired prior to July 1, 1935. The result in the present case would be a conversion for all practical purposes of this contract carrier into a common carrier -- a step which would tend to nullify a distinction which Congress has preserved throughout the Act. If such a metamorphosis is to be effected or if the appellant is to obtain a permit broader than the actual scope of his established business, the showing required by other provisions of the Act must be made."

It is, therefore, the conclusion of this office that once a contract carrier permit has been issued the contract carrier can enter into additional contracts up to five covering the same commodities and in the same area without further hearings.

I trust this answers your two basic questions.