

## Opinion No. 49-5256

December 1, 1949

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Eugene Allison, Commissioner State Corporation Commission Motor  
Transportation Department Santa Fe, New Mexico

{\*98} In your letter of November 14, 1949, you refer to a Certificate of Public Convenience and Necessity, No. 762, issued by the State Corporation Commission which reads as follows:

"Transportation of passengers and baggage between Albuquerque, New Mexico and Bel-Air, a suburb, scheduled service, over regular routes. No service within the City of Albuquerque other than those passengers to and from Bel-Air."

The facts show that the area that this line now serves will be taken into the city limits of Albuquerque sometime in the near future. You inquire as to whether this Certificate issued by the State Corporation Commission will still be in effect over this area. In other words, whether the State Corporation will have jurisdiction or the City of Albuquerque.

The facts also show that there is no definite duration of the life of said certificate.

Section 68-1308 of the 1941 Compilation sets forth the provisions for a Certificate of Convenience and Necessity. Section 68-1325 provides as follows:

"Neither this act nor any provisions hereof shall apply or be construed to apply to any of the following: \* \* \* (f) Busses traveling a fixed route, the greater portion of which lies within the boundaries of any one (1) city."

Section 68-1311 of the 1941 Compilation provides in part as follows:

"No certificate issued in accordance with the terms of this act shall be construed to be either a franchise or irrevocable or to confer any property right upon the holder thereof. \* \* \*"

In the case of Public Service Commission of Puerto Rico v. Havemeyer et al, 296 U.S. 506, the Court, on page 517, states:

"The reserved power to repeal a grant of special privileges implies that it may be exerted at the pleasure of the legislature or other authority in which the power to repeal is vested. That power is plainly distinguishable from the power to cancel for violation of the terms of the grant. In absence of constitutional, legislative or contractual restriction, the exertion of the first mentioned power requires nothing more than an appropriate declaration of the repeal."

From the reading of the statute and cases above cited, it is my opinion that since the route in issue will soon come within the purview of Section 68-1325, subsection (f), the certificate will become ineffective by operation of law and the city of Albuquerque from thence on will have jurisdiction over the matter.