

Opinion No. 49-5231

July 15, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Tom C. Cox, Chief Clerk State Corporation Commission Santa Fe, New Mexico

{*62} I have your letter of May 17, 1949, requesting the opinion of this office as to whether or not the Corporation Commission is empowered, under § 47-106 of the New Mexico 1941 Compilation to regulate aircraft carriers engaging {*63} in crop dusting from the air.

§ 47-106 of the 1941 Compilation provides as follows:

"Every person, firm, corporation, association or company at any time engaged, either regularly or for the time being only, in the transportation of persons or property for hire between points within this state or from a point within this state and return thereto, is hereby declared to be a common carrier within the meaning and purview of section 7 of article 11 of the Constitution of the state of New Mexico."

Research on this subject has disclosed only one case in point. In *Quick Aviation Co. v. Kleinman* (Ariz.) 138 P.2d 897, the Supreme Court of Arizona held that one engaged in crop dusting for hire came within the classification of "contract carrier" rather than "common carrier." In New Mexico contract carriers are included within the broad definition of common carriers as set forth in § 47-106 of the 1941 Compilation above quoted. Since contract carriers are included within the classification of common carriers under our statute, the above cited Arizona case is strong authority for the proposition that persons, firms, corporations, associations or companies engaged in the business of crop dusting from the air for hire are common carriers and it is, therefore, the opinion of this office that they are subject to regulation by the State Corporation Commission. In preparing your regulations you should be governed by the provisions of § 47-107 of the 1941 Compilation.

Opinion No. 5162, rendered by this office on July 16, 1948, is hereby overruled.