

Opinion No. 49-5262

December 7, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Eugene Allison, Commissioner State Corporation Commission Santa Fe, New Mexico

{*107} We are in receipt of your recent letter pertaining to Certificate {*108} of Public Convenience and Necessity No. 623 issued on December 16, 1946, giving the authority of transporting passengers and express service from West Silver and South First, Albuquerque, on through East Central on Highway 66 and proceeding along said highway 66 to State Highway No. 10 until the junction with Sandia Loop is made.

We understand that said Certificate of authority is not in use at the present time but it is proposed, under said certificate, to serve Sandia Base as an off-route point and also to make stops within the City of Albuquerque for passengers who are destined for Sandia Base or a point beyond the city limits of Albuquerque.

You ask my opinion on two points: (1) Can Sandia Base be served as an off-route point under above authority? (2) Can owner pick up passengers on Central Avenue within city limits of Albuquerque?

Section 68-1311 of New Mexico Statutes Annotated, 1941 Compilation, states:

"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."

Article 11, Section 7, of the Constitution of the State of New Mexico states:

"The (Corporation) Commission shall have power and be charged with the duty of fixing, determining, supervising, regulating and controlling all charges and rates of railway, express, telegraph, telephone, sleeping-car, and other transportation and transmission companies and common carriers within the state, * * *".

Section 74-801, 802, New Mexico Statutes Annotated, 1941 Compilation, state:

"It shall hereafter be unlawful to construct, own, operate, manage, lease, or control any plant or equipment for the furnishing of any public utility service contemplated by Article 11, Section 7 of the Constitution of the State of New Mexico in the same municipality, field or territory where there is in operation any such plant or equipment engaged in a similar service unless public convenience and necessity shall require such second plant or equipment."

"Such question of public convenience and necessity shall be determined upon petition and hearing in the district court of the county wherein the proposed second plant or equipment is to be operated."

It is evident from the above quotations that it is the desire of the law in granting a certificate of public convenience and necessity that there be no duplicity of service. Although the law does not favor monopolies, it does not desire to create destructive competitive practices. 3 Federal Carriers Cases 375.

Furthermore, Section 68-1308 states:

"Before granting a certificate to a common motor carrier, the commission shall take into consideration existing transportation facilities in the territory for which a certificate is sought, and in case it finds from the evidence that the service furnished by existing transportation facilities is reasonably adequate, the commission shall not grant such certificate."

In the instant case the certificate was issued in 1946 to serve Sandia Loop which had no other adequate service. Now, the {*109} owner desires to serve Sandia Base under Rule 27 of Rules and Regulations of State Corporation Commission, 1947, which states that operators may serve off-route points adjacent to and not exceeding five miles of their regular route. Provided, however, that unless these points are served regularly, nothing can prevent a new operator from establishing a regular service.

In the instant case, we find that another operator has had for many years prior to the certificate holder, a city franchise to service Sandia Base.

It is a well settled principle of law that public grants are to be construed strictly. *Charles River Bridge v. Warren Bridge*, 36 U.S. 419.

It is therefore my opinion that the off-route, rule 27, does not apply in the instant case for it would be in contravention to the statute above cited pertaining to duplicity of adequate services.

If the certificate holder requested a new certificate for Sandia Base, he would not be in a position to receive one from the Commission because of the provisions of Sections 68-1308, *New Mexico Statutes Annotated, 1941 Compilation*. Therefore, he should not be permitted to do indirectly what he cannot do directly and thereby circumvent the intention of the *New Mexico Statutes*.

It is a well settled rule of law in *Common Carrier* cases that operation of bases in cities and military areas is left to the control of the local authorities. 3 *Federal Carrier Cases*.

Therefore, it is my opinion that said owner of Certificate No. 623 does not have the authority to make stops in the City of Albuquerque in contravention of the ordinances of City of Albuquerque which prohibit such stops.

Trusting this sufficiently answers your inquiry, I am