

Opinion No. 51-5461

November 27, 1951

BY: JOE L. MARTINEZ, Attorney General

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

{*170} This is in reply to your letter of October 26, 1951, in which you request that I re-examine the opinion of this office numbered 4852 rendered February 8, 1946. That opinion was concerned with the application to the operations of I.C.C. certified interstate motor carriers, of the Caravan Law, § 68-228 (e) N.M.S.A. 1941 Comp., the Port of Entry Law, § 68-1531, and a portion of the Motor Carrier Act, § 68-1309. The 1946 opinion stated that the interstate carrier could comply with any one of the three provisions of law cited and thus be exempt from the operation of the other two. My examination of these provisions of the law makes it necessary for me to disagree with the contention of that earlier opinion of this office.

Section 68-1309 makes it mandatory for all common motor carriers engaged exclusively in interstate commerce to register their I.C.C. certificates and to obtain a certificate of registration from the State Corporation Commission. In order to justify non-compliance with the strict mandatory language of this section of the Motor Carrier Act we must necessarily find in the law some exemption from its application or we must find a later enactment which either specifically or by necessary implication repeals the provisions requiring registration. The statutes contain no such exemption or repeal of the registration provisions of § 68-1309.

The Caravan Law, which is embodied in § 68-220 (e), sets forth the requirements for lawful use of the highways for transporting motor vehicles and trailers. It sets up fees to be paid for permits to lawfully transport such vehicles over the highways. The last proviso of this section, which was added by amendment thereto in 1941, states:

"This tax shall not be applicable to the transportation of vehicles carried on another vehicle operating under a State Corporation Commission permit as a carrier, duly licensed under motor vehicle laws of the state, and for the operation of which a mileage tax is paid."

The Caravan Law provides no exemption from the application of the registration provisions of § 68-1309.

I have made an examination of the Port of Entry Registration Law, {*171} particularly § 68-1529, dealing with the various requirements for issuance of clearance certificates or special permits for the use of the highways by commercial motor vehicles transporting passengers or property. The Port of Entry Law is not in conflict with nor does it provide

any exemption from the application of the provisions of § 68-1309 concerning registration of interstate carriers.

An examination of the mileage tax law applicable to interstate carriers, particularly § 68-1531, reveals that the tax is assessed only against vehicles not licensed and registered in the State of New Mexico. Opinion No. 4322 of this office, dated January 23, 1943, made it clear that the mileage tax imposed by this section could not be assessed and collected for motor vehicles registered or licensed under our New Mexico laws. There is nothing, however, in the mileage tax statute applicable to interstate carriers which excuses them from registering with the Corporation Commission.

It is my opinion that the registration of Interstate Commerce Commission certificates by interstate carriers and their compliance with the applicable provisions of the Motor Carrier Act (§ 68-1309 et seq.) is mandatory and that there are no alternatives to compliance therewith or exceptions or exemptions other than those provided by § 68-1325 of the Motor Carrier Act.

An interstate carrier engaged in drive-away, tow-away, truck-away transportation of vehicles through New Mexico must register its I.C.C. certificate with the State Corporation Commission.

As stated at the outset I cannot agree with the statement of the law as contained in Opinion No. 4852 of February 8, 1946, and insofar as it states that there are any alternatives to compliance with the registration provisions of § 68-1309 it is hereby expressly overruled.