

## Opinion No. 52-5533

April 30, 1952

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

**TO:** Mr. C. C. Boatright, Director Traffic and Rate Division State Corporation  
Commission Santa Fe, New Mexico

{\*244} Recently you inquired of this office as to the scope of Chapter 194, Laws 1951 (74-722 N.M.S.A., 1941) so far as it designates the period for measuring gross receipts upon which taxes are to be paid by utilities and carriers subject to the act.

The statute provides that such utilities and carriers shall pay to the State Corporation Commission an annual inspection and supervision fee of 1/4 of 1% of their respective gross receipts from business transacted in New Mexico for the preceding calendar year.

You ask if the tax applied to business transacted for the period June 9th to December 31st, 1951, or whether fees collected after June 9th, 1951, should apply upon business for the period June 9, 1950, to December 31, 1950.

This law is almost identical with Laws 1941, Chapter 84, Sub-paragraph 44; Laws 1943, Chapter 99. Sub-paragraph 1 (72-608, N.M.S.A.) requiring utilities, subject to the jurisdiction of the Public Service Commission to pay fees to the State measured by gross receipts. Dates of payment of the tax are the same as the dates specified in 74-722, N.M.S.A., and the period covers the gross receipts for the preceding calendar year.

It is my opinion that the tax applies upon business transacted for the period June 9, 1950 to December 31, 1950, and that the fees collected in 1951 apply upon this business. I am informed that when the almost similar law became effective in 1941 for the Public Service Commission, this was the method followed in administering the law by that body.

Consequently, while the language of 74-722, N.M.S.A., might be open to several constructions, inasmuch as the Legislature had before it in the enactment of the law a previous method of interpretation given to it by another administrative agency, it is presumed that the later expression of the Legislature is intended to require the administrative interpretation previously followed by another commission dealing with similar legislation.

You also inquired as to whether the collection of this fee should be based solely upon intra-state business (business transacted wholly within the State of New Mexico) or whether the basis for the fee can be upon the basis of figures used in the collection of the Franchise Tax {\*245} which, you stated, is based on both intra-state and interstate business transacted within the State of New Mexico.

Your attention is respectfully called to the last sentence of 74-722, N.M.S.A., which reads as follows:

"In the case of such utilities or carriers engaged in inter-state business, the fees shall be measured by the gross receipts of such utilities or carriers from intra-state business only for such preceding calendar year, and not in any respect upon receipts derived wholly or in part from interstate business."

It is, therefore, my opinion that the collection of this fee should be based strictly upon intra-state business, i.e., business transacted solely within the State of New Mexico, whose receipts are not derived in whole or in part from interstate business.

I trust that this fully answers your inquiry.