

Opinion No. 53-5646

January 27, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: State Corporation Commission Motor Transportation Department State Capitol
Santa Fe, New Mexico

{*33} This is in reply to your request for an opinion on the question of whether or not the State Corporation Commission can allow the taking of depositions of witnesses in any district court to be used in your hearings on motor transportation.

It is to be noted at the outset that under §§ 74-701, et seq., N.M.S.A., 1941 Comp., as amended provide for the taking of depositions. It is to be noted that § 74-724 of this particular chapter of the laws of the State of New Mexico exempts common and contract motor carriers from the provisions of this act and this particular chapter shall not apply to them.

We are therefore confronted with Art. XI of the Constitution of New Mexico and §§ 68-1302 et seq., N.M.S.A., 1941 Comp., as amended, as authority determining this question. Section 8 of Art XI forbids the commission to determine any question or issue or order into matters specified in this Constitution until after a public hearing, except in case of default, has been had. Secs. 68-1308, 68-1317 and 68-1333 N.M.S.A., 1941 Comp., as amended, provide for hearings for certificates of convenience and necessity, permits and complaints regarding rates, service regulations, etc. The substance of these statutes is that the State Corporation Commission will have a hearing upon proper notice and all parties will be allowed to offer testimony and to participate therein.

In the absence of a clear statutory provision for the taking of depositions it is the opinion of this office that the State Corporation Commission should not specifically authorize any participant or intervenor to take a deposition of any party to be used at a public hearing. The powers and duties of the State Corporation Commission in the conduct of such hearings and in the admission of evidence are broad, so they they might have all the facts available upon which to base their wise decision. Administrative hearings, although patterned after judicial proceedings, are not strictly bound by the rules of civil procedure of the courts of the State of New Mexico, and as such the burden of the State Corporation Commission is to give a full hearing to such participants as are interested and as are qualified to appear. To allow testimony to be taken prior to a public hearing by deposition would be to imperil the right of the public who may wish to intervene subsequent to such deposition.

It is the opinion of this office that any participant in such a public hearing, {*34} who offers a deposition which he may have taken after proper notice may submit the same to the State Corporation Commission during the public hearing for consideration as evidence, in whole or in part, but such offering is made at the peril of the proponent, and

the final decision as to whether such evidence, in whole or in part, is to be admitted is with the State Corporation Commission. If the Corporation Commission feels that all parties have been properly notified, were or could have been proper participants in such a deposition, that the party whose deposition is being offered is unavailable and that such evidence is material to the hearing, then it may consider receiving such evidence in the matter before it.

We trust that this answers your question.

By: William J. Torrington

Assist. Attorney General