

Opinion No. 53-5673

February 16, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. James F. Lamb, Chairman State Corporation Commission The Capitol Santa Fe, New Mexico

{*65} This is in answer to your request for an opinion upon the interpretation of this office of § 68-1325 (f) N.M.S.A., 1941 Comp., as amended, dealing with exemption of municipal busses from New Mexico Motor Carrier Act.

{*66} Specifically, you desire to know if a motor carrier of passengers operating within the City of Santa Fe is exempt from the provisions of the Motor Carrier Act by reason of the section heretofore mentioned when operating to the ski run. The present exemption section of this statute was passed in its original form, being Laws 1933, Ch. 154, § 25. The law was amended in 1937, 1947, 1949 and 1951, but did not substantially make any change in reference to subparagraph (f), with which we are herein concerned.

This office has written two opinions upon this subject, one numbered 4842 and the other numbered 4950, appearing in the Report of the Attorney General of New Mexico, 1945-46, both addressed to Mr. Don R. Casados of the State Corporation Commission. It is to be noted that this is prior to the case of Whitfield, et al, v. The City Bus Lines, cited in 51 N.M. 434, 187, P. 2d 947, which was before the Supreme Court in December of 1947. Opinion 4950 clarifies the prior opinion and specifically states that each separate route with fixed terminal points would have to stand alone in determining the proportionate part that may lie within a municipality or without such municipality, **in the event a company operates more than one separate and distinct route.** In the Whitfield case, cited above, the Supreme Court had this to say:

"Appellants next contend that appellees (Las Cruces Bus Company) operate three or more routes, and not a **fixed route** as contemplated by the statute; that appellees' operation within the city was merely a sham so arranged as to duplicate distances so the greater portion of the route operated by them would lie within the boundary of the city of Las Cruces. They base their conclusion on the fact that appellees' busses pass the intersection of Las Cruces and Main Street on three separate occasions in completing the circuit . . .

"We have before us a map covering the route of appellees. From it we conclude that the city of Las Cruces, apparently, is well served by appellees and that the transfer point at Las Cruces and Main Street is for the convenience of passengers. A passenger is not compelled to transfer. He may ride the entire route or transfer at the intersection for quicker service. We find no merit in this contention."

This office is still of the opinion that the Legislature intended that where the motor carrier of passengers has a fixed route he may only be exempt from regulation from operation outside of the city limits when a greater portion of that fixed route lies within the boundaries of the city. In the holding in the Whitfield case it appears that the court looked upon the City of Las Cruces as having one fixed route and that they therefore permitted an extension outside of the city limits of an addition of a number of miles not in excess of that fixed route in the city.

In approaching this question where the commission has a certificate carrier properly authorized to operate outside of the city and another carrier is servicing the same area, under the guise of the heretofore mentioned exemption, the State Corporation Commission, under its statutory authority, may receive complaints of such illegal operation from the certified carrier and proceed to hear the case upon its merits and to determine whether the carrier who claims the exemption is in fact entitled to it.

{*67} We trust that this may be of some assistance to you in this matter.