

Opinion No. 54-5942

April 19, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Ingram B. Pickett, Chairman State Corporation Commission Santa Fe, New Mexico

{*392} You have requested the opinion of this office upon the question of {*393} whether a company, whose business is the sale of services in the form of a transmission of television signals which have been picked up by a central antenna and distributed to the purchasers of such service by means of cables, is required to procure a certificate of convenience and necessity either from the State Corporation Commission or Public Service Commission before commencing such business.

It is evident that such operations do not come under the jurisdiction of the Public Service Commission, taking the most restrictive viewpoint possible of our Constitution, which has been the tendency of our Court and past Attorneys General. Opinions of the Attorney General, 1912-13, page 68; **La Follette vs. Albuquerque Gas & Electric Co.'s Rates**, 37 N.M. 57, 17 P. 2d 944.

Section 72-302, N.M.S.A., 1941 Comp., which is Section 1 of the Public Utility Act of 1941, narrows down the application of the Public Utility Act to electric (used for certain purposes), gas, and water utilities. The Constitution of the State of New Mexico, Art. 11, § 7, which sets up the Corporation Commission and gives it exclusive jurisdiction over the Public Utilities mentioned therein, specifically states the powers and duties of the Commission to include the regulation of (1) rates and charges; (2) safety appliances; and (3) sufficiency of cars and equipment. No mention is made in the Constitution of a certificate of convenience and necessity, but both in § 4 and § 7 of Art. 11 the Commission is given the power to make such rules and orders as are necessary to carry out the duties delegated to it by the people of New Mexico. To my knowledge, the Commission has never passed any rule or order requiring a certificate of convenience and necessity relative to the public utilities named in Art. 11, § 7.

It is interesting to note that the Legislature in 1941, simultaneous to the passage of the Public Utility Act which attempted to alleviate the seeming absence in our Constitution of provision for regulation of electric, gas and water utilities, passed an act which appears as Ch. 154, § 1 through 6, Laws of 1941 (§ 74-801 et seq., N.M.S.A., 1941 Comp.). This particular Law, as its title would indicate, provided for the issuance of certificates of convenience and necessity of Public utilities included under Art. 11, § 7, of the Constitution. To the writer's knowledge, this segment of our law has not been construed by the Court, nor do we here decide its force and effect.

It is, therefore, the opinion of this office, that there does not now exist any requirement that a business, such as was described in paragraph one of this opinion, obtain a

certificate of convenience and necessity from either the Public Service Commission of New Mexico or the Corporation Commission of New Mexico before commencing to do business.

By: William J. Torrington

Assist. Attorney General