

## Opinion No. 56-6409

March 20, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** W. K. Waite, Chief Clerk, Motor Transportation Department, State Corporation Commission, Capitol Building, Santa Fe, New Mexico

You have asked the opinion of this office on whether or not the following described operation is within the jurisdiction of the Corporation Commission for regulation:

"Transportation of household garbage, trash and refuse in Santa Fe, Sandoval, Bernalillo, Valencia, McKinley, Torrance, Socorro and Dona Ana Counties, over irregular routes, under non-scheduled service."

You state that a firm has made application for a Certificate of Public Convenience and Necessity to perform this service. You submitted that application, together with supporting documents, for our study and we herewith return the same to you.

Section 64-27-1, N.M.S.A., 1953 Compilation, provides, among other things, that the Corporation Commission has the duty to supervise and regulate the transportation of persons and property by motor vehicle for hire upon or over the public highways of this State.

Section 64-27-2 defines a common motor carrier as follows:

"The terms common motor carrier, when used in this act, shall mean any person who or which undertakes, whether directly or by lease, or any other arrangement, to transport passengers or property, or any class or classes of property for the general public, by motor vehicle for hire over regular routes, under scheduled service or over irregular routes under unscheduled service; . . ."

A contract motor carrier of property is defined in § 64-27-14 as any person engaged in the transportation by motor vehicle of property for hire and not included in the term "common motor carrier of property".

It is thus apparent that the State Corporation Commission has jurisdiction over common and contract motor carriers for hire and is without jurisdiction over private carriers.

In answering your inquiry, it is necessary to determine if a garbage, trash and refuse hauler is a common, contract or private carrier. There is no proposed contract submitted by the applicant, therefore, it must be assumed that there will be no written contract between the applicant and customer within the counties proposed to be served. The usual arrangement, I presume, from common usage, would be for there to be an oral

agreement that the applicant would haul away any garbage, trash or refuse deposited by the customers in their respective receptacles.

A common carrier was defined in the case of *Samuelson v. Public Utilities Commission of State, et al.*, 227 P. 2d 256, as follows:

"One who offers to carry goods for any person between certain termini and who is bound to carry for all who tender their goods and price of carriage, is a 'common carrier'."

It is doubted if the applicant plans to haul goods between certain termini as that term is generally used in the transportation business since the customer usually does not care what happens to his garbage, trash or refuse once he places same in the proper receptacles. He does not instruct the transporter of same where to make delivery.

This leads to the next question: Whose property is being hauled once the carrier places same on his truck?

If title to the property passes to the carrier, he is hauling his own commodity and it follows that he is a private carrier. See *Weller v. Kolb's Bakery and Dairy*, 4 A. 2d 130.

It is our opinion that the average person abandons any title he may have to garbage, trash and refuse once same is picked up by the hauler. This particular commodity is placed upon a truck commingled with like goods and loses all identity as the property of any particular person. It follows that once the hauler picks same up he has title to it, can distribute it where he pleases, and, therefore, is hauling his own goods.

This conclusion is supported by a document which was attached to the application from the Illinois Commerce Commission entitled "General Order No. 5", wherein the Illinois Commission felt that private scavengers exercise complete control as to the use and disposition of the waste material they remove and that no property rights were preserved or intended to be preserved in such material by the persons requesting the removal and disposition of such waste materials. The Illinois Commission further pointed out that there is no person to whom such waste material is consigned or to whom such waste material is shipped and that the private scavengers were engaged in a private commercial enterprise.

It is also apparent that this type transporter is performing a special service rather than performing the services of common or contract carrier, to-wit, the disposing and carrying away of waste materials.

Our Supreme Court in the case of *Marsh Aviation Company v. State Corporation Commission*, 55 N.M. 178, ruled that where a special service is being rendered, the person rendering same was not a common carrier where the carriage was incidental to the special service.

It is, therefore, our opinion that the Corporation Commission does not have jurisdiction to grant a Certificate of Public Convenience and Necessity to the applicant who wishes to haul household garbage, trash and refuse.

We are well aware that the Health Department is interested in bringing about effective regulation of this type transporter and requiring the use of special equipment so as to cut down the incident of disease with the carriage of same. However, it is our feeling that this is a matter which could be provided by the Legislature or which each and every county could effectively control through its inherent police powers.

Hoping this answers your inquiry, I remain

By: J. A. Smith

Assistant Attorney General