

## Opinion No. 56-6504

August 10, 1956

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

**TO:** Mrs. Natalie Smith Buck, Secretary of State, State Capitol Building, Santa Fe, New Mexico

You have asked for our opinion on the legal propriety of various motor common carriers designating the Secretary of State as their agent for service of process under Section 64-27-50, N.M.S.A., 1953 Compilation. You relate that many motor common carriers have formally designated the Secretary of State as their agent for service of process without an attempt on their part to appoint some other person to serve as such agent. Section 64-27-50, N.M.S.A., 1953 Compilation, provides among other things that:

"Every motor common carrier at the time of filing application for a certificate of public convenience and necessity or for a certificate of registration as an interstate carrier and every contract motor carrier at the time of filing an application for a license, shall also file with the corporation commission an appointment in writing of some agent, resident within this state, upon whom all orders of said commission and all lawful process of any court against any such carrier may be served. . . ."

And further in the same statute it is provided that:

". . . . The operation on any public highway of this state of any motor vehicle by any carrier then engaged in a business subject to the provisions of this act, without the appointment of any agent as specified herein, or the failure of any such carrier to appoint in the manner herein provided a substitute for any agent theretofore appointed within ten (10) days from and after the death, concealment within this state or removal from this state of such previously appointed agent, shall be deemed equivalent to the appointment by such carrier of the secretary of state of the state of New Mexico or his successor in office to be its true and lawful attorney upon whom may be served all orders of the corporation commission and all lawful process of any court of this state in any action or proceeding against such carrier growing out of any accident, collision or transaction in which said carrier may be involved in so operating in this state. . . ."

It is the opinion of this office that it was intended by the Legislature that the motor common carrier should initially appoint as agent for service of process some resident within this State other than the Secretary of State. The provisions of the above statute regarding the Secretary of State's appointment were not passed for the benefit or convenience of the motor common carriers. Such provisions were obviously intended for the benefit of the public in the event that the initial mandatory appointment was not made or subsequently the agent died or removed from the State or concealed himself within this State. In the latter instances the appointment is deemed made without any formal action of the motor common carrier. The Secretary of State is deemed appointed

notwithstanding the wishes or desires of the motor common carrier. Thus, if the Secretary of State, as a private person and not in her official capacity, does not desire to serve as such agent, the designations which have been made may be revoked and the carriers involved as well as the Corporation Commission be advised of such action. The statute clearly imposes upon the motor common carrier the duty, in the first instance, to appoint an agent who will consent to serve as such.

A copy of this opinion is being sent to the Corporation Commission so that they will be advised that in the future the required designation may be of someone other than the Secretary of State in that capacity, and that the application should not be approved unless an appointment of an agent for service of process is made of someone other than the Secretary of State in that capacity.

As to the group of motor common carriers who have formally designated the Secretary of State as such agent, these should be advised that they have no valid designation of such agent and that the same should immediately be made.

I trust the above answers your inquiry.

By: Santiago E. Campos

Assistant Attorney General