

Opinion No. 56-6510

August 10, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. John Block, Jr., Chairman, State Corporation Commission, Santa Fe, New Mexico

You have asked for our opinion on the question:

"Is a person who gives student pilot instruction, and transports said student by air without a Certificate of Public Convenience and Necessity from this Commission violating the law?"

Put another way, I believe your question could be stated: Is a person giving student air pilot instruction a common carrier within the meaning of § 44-1-6, N.M.S.A., 1953? That section provides:

"Every person, firm, corporation, association or company at any time engaged, either regularly or for the time being only, in the transportation of persons or property for hire between points within this state or from a point within this state and return thereto, is hereby declared to be a common carrier within the meaning and purview of section 7 of article XI of the Constitution of the state of New Mexico."

It is our opinion that such a person is not a common carrier within the meaning of the above section. This conclusion is based on the case of Marsh Aviation Company v. State Corporation Commission, 55 N.M. 178. There it was held that a person who carried insecticides in an airplane for spraying or dusting lands was not a common carrier within the meaning of the above section even though in engaging in that activity he transported property. Such transportation was not deemed of the type covered by the statute. The transportation of such property was deemed incidental to the performance of a specialized service. We take the same view regarding a person who sells instruction and during that instruction incidentally carries a passenger in order to teach him how to operate and fly an airplane.

I trust the above answers your inquiry.

By Santiago E. Campos

Assistant Attorney General