

Opinion No. 57-120

June 3, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Assistant Attorney General

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

QUESTIONS

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May school bus carriers enter into lease agreements with various clubs and religious groups whereby the formers' equipment and drivers are used to transport members of said groups to various points in the State without the approval of said lease by the State Corporation Commission? Under this agreement the lessor has the duty to maintain the equipment, supply the fuel, purchase and maintain insurance on said equipment, as well as having complete control and supervision of the drivers.

CONCLUSION

No.

OPINION

ANALYSIS

The New Mexico Motor Carrier Act (§§ 64-27-1 to 64-28-6, N.M.S.A., 1953 Compilation and 1955 Pocket Supplement) was enacted for the purpose of conferring upon the State Corporation Commission the power and authority to make it its 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 64-27-15 specifically excludes contract motor carriers of passengers who are engaged exclusively in the transportation of children to or from school from the provisions of the Act.

On the other hand, § 64-27-5, N.M.S.A., 1953 Compilation, provides that "no common motor carrier of property or passengers shall operate any motor vehicle for the transportation of either persons or property for hire on any public highway in this state except in accordance with the provisions of this act."

In view of the two statutes quoted above, it becomes material to determine whether a school bus carrier who, in addition to his school bus operations, enters into lease agreements with various groups of the general public whereby his equipment and

drivers are utilized to transport members of said groups to various points in the state, is essentially operating in the capacity of a common carrier of passengers for hire. If such is the case, the said carriers are subject to all provisions of the Act.

Section 64-27-2, N.M.S.A., 1953 Compilation, defines a common 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; . . ." (Emphasis supplied).

The language of this statute is clear, and in the opinion of this office clearly brings within the provisions of the Motor Carriers Act a school bus carrier who is transporting various groups of people throughout the state by means of a lease agreement entered into with the group. We are prompted to this conclusion by virtue of the fact that unlike the normal lease agreement, these carriers are at all times in complete control of their equipment and drivers. The drivers are subject to dismissal at all times for failure to obey orders. The equipment is serviced and maintained in good mechanical order by the carrier. The fuel is supplied by the carrier. The carrier also purchases and maintains all insurance on the equipment. A consideration of all these factors lead us to conclude that such a carrier is providing primarily a transportation service and that the lease agreement is merely a method of payment for that service. Any other interpretation would make it possible for a motor carrier to operate beyond the scope of his certificate of authority by merely entering into a similar agreement with the group he has contracted to transport. Clearly the Legislature did not intend that a carrier might circumvent the Act in this way.

Since it is our opinion that these motor carriers are subject to all provisions of the Act, it follows that all leases entered into by said carriers must be approved by the State Corporation Commission in accordance with § 64-27-27, N.M.S.A., 1953 Compilation.

The Commission's attention is also called to § 64-27-29, which states that the Commission is charged with the duty of disapproving a proposed lease if, after hearing, it finds that the purpose of said lease is to circumvent any law or regulation pertaining to the status, service, classification, or facilities or rate of common or contract motor carriers.