

Opinion No. 60-109

June 13, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Ingram B. Pickett State Corporation Commissioner Santa Fe, New Mexico

QUESTION

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Are funeral directors who own ambulances and operate an ambulance service with such vehicles required to obtain a certificate of public convenience and necessity in connection with such activity?

CONCLUSION

Yes.

OPINION

{*480} ANALYSIS

Funeral directors who own and operate ambulances **in connection with their business** are exempt from motor carrier regulation. The exemption is found in § 64-27-25 (h), N.M.S.A., 1953 Compilation, as amended. The applicable part of this section provides as follows:

"Neither this act nor any provisions hereof shall apply or be construed to apply to any of the following:

...

(h) Ambulances, hearses, funeral coaches, or any other {*481} motor vehicle, belonging to or operated by any funeral director or assistant funeral director licensed pursuant to the provisions of Chapter 71, New Mexico Session Laws of 1947 (67-20-1 to 67-20-33) **in connection with his business.**" (Emphasis added).

This office has previously held that ambulances are subject to regulation by the State Corporation Commission as contract carriers unless they come within one of the various specific exemptions. Opinion of the Attorney General, 1949-50, No. 5199.

In the present situation ambulances owned and used by funeral directors in connection with their business are exempt by specific provision of statute. The question is, therefore, whether or not the providing of ambulance service generally by funeral

directors brings them within the exemption. The question answers itself. If a funeral director is engaging in the business of providing ambulance service as such in an area, this is a different service or business than one which concerns itself with the operation of a funeral home.

In this connection, it is significant to note that ambulances in the above quoted exemption are grouped together with hearses, funeral coaches or any other motor vehicle. We also note that the exemption defines a funeral director as one who comes within and is licensed in accordance with the provisions of § 67-20-1 et seq. of our statutes. These latter sections, which deal specifically with the licensing and regulation of morticians and embalmers, define, not only who a funeral director is, but also what the business of running a funeral establishment embraces. The specific section 67-20-5, N.M.S.A., 1953 Compilation, reads as follows:

"A funeral director is a person, partnership, association, corporation or other organization engaged in or conducting, or holding himself or itself out as engaged in any of the following:

- (a) Preparing for the burial or disposal, or directing and supervising of the burial or disposal of dead human bodies.
- (b) Maintaining a funeral establishment for the preparation for the disposition of or for the care of dead human bodies.
- (c) Using, in connection with his or its name or funeral establishment the words 'funeral director,' or 'undertaker,' or 'mortician,' or any other title implying that he or it is engaged as a funeral director.

A funeral establishment is a place of business conducted at a specific street address or location devoted exclusively to the care and preparation for burial or transportation of dead human bodies and consisting of:

- (a) A chapel in which funeral services may be conducted.
- (b) A preparation room equipped with a sanitary flooring and necessary drainage and ventilation, and containing necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or transportation.
- (c) A display room containing a stock of funeral caskets and shipping cases.

...."

This office is of the opinion that the furnishing of ambulance service, as such, when not related to the activities specified in the above statute, does not come within the exemption permitting a funeral director to use ambulances in connection with his business without regulation.