

Opinion No. 67-40

March 10, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Johnny A. Taylor Research Analyst Legislative Finance Committee State Capitol Building Santa Fe, New Mexico

QUESTION

QUESTIONS

"1. May the state corporation commission, under the provisions of Article XI, Sections 7 and 10, allow an intrastate motor carrier operating under a certificate of public convenience and necessity or a permit to haul freight for the state of New Mexico and the United States government at special rates below the regular tariffs which are approved and published for carriers when hauling freight for other customers?"

2. If the answer to question number one is yes, is there any provision in the state constitution or the motor carrier act which would prohibit the state corporation commission from allowing intrastate carriers hauling freight for the state of New Mexico or the United States government to charge these shippers at special rates below the regular published tariff when the special rates can be justified on the basis of economics or cost advantages not available to the carriers when transporting for other customers?"

CONCLUSION

1. See Analysis

2. Yes, see Analysis.

OPINION

{*52} ANALYSIS

In order to answer your questions we will take the liberty of restating those questions for clarity. The first question to be answered is whether special rates are prohibited under Article XI, Sections 7 and 10 of the New Mexico Constitution.

It is our opinion that under the language contained in the last sentence of Article XI, Section 10 special rates could be established for service rendered to the United States or this state without violating the terms of the New Mexico Constitution. The term 'special rates' as used in that section is neither defined nor is it used elsewhere in the constitution. We will discuss its meaning generally in a subsequent portion of this opinion.

The second question to be answered is whether or not the State Corporation Commission, under Article XI, Sections 7, 8 and 9 can permit the establishment of such rates. It is our opinion that under those sections the commission does have the power and authority to establish such rates. **State v. Mountain States Tel. & Tel. Co.**, 54 N.M. 315, 224 P. 2d 155 (1950). In the aforesaid case the Court held that by self-executing provisions contained in the constitution a department of government was established having jurisdiction over rates and service charges made to customers of public service companies. Further, Article XI, Section 4 of the New Mexico Constitution, the commission has the power to establish rules of order and procedure, except where such have been established in the constitution. Under this provision the commission could establish the procedures for determining the validity of a special rate.

In view of the fact that the commission has the power to establish such special rates the next {*53} question is -- what are special rates, as that term used in Section 10. As we do not have specific proposals before us, we are unable to give any clear definition of the term. At best we can only establish some specific provision and case law, certain guide lines or limitations on such rates. Pursuant to Article XI, Section 8 of the New Mexico Constitution, it is clear that 'special rates' must be just and reasonable. The critical question is whether special rates must compensate the carrier or whether such rates could be not only less than those available to the general public but less than the cost to the carrier of providing such service. It is our opinion that except in the most exceptional instances the commission could not arbitrarily establish without regard to just and right, a tariff of rates for transportation which is so unreasonable as to practically destroy the value of property of persons engaged in the transportation business. **State v. Mountain States Tel. & Tel. Co.**, supra; **Chicago-Milwaukee and St. Paul Railroad of Minnesota**, 134 U.S. 418 10 S. Ct. 462, 33 L. Ed. 970. Under the above rule it is clear that such special rates must be compensable to the carrier providing the service.

It is our opinion that the answer to your second question is Yes. In spite of the fact that you refer to 'special rates' the basis for establishing the rates proposed in your second question is entirely consistent with the procedure established and set forth in Sections 64-27-32 and 64-27-33, N.M.S.A., 1953 Compilation. Where a carrier, attempting to establish rates for services to the state on the basis that there were economics available to him, it would be proper under existing laws for him to follow the normal procedure of getting its rates approved.

It should be noted that all matters pertaining to rates must be conducted in hearings before the State Corporation Commission. Under Article XI, Section 8 of the New Mexico Constitution there is a requirement for Notice and Hearing before the Commission which must be complied with.

By: Myles E. Flint

Assistant Attorney General