

Opinion No. 67-85

June 28, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Honorable Jose B. Chavez State Representative Box 40 El Guique Drive San Juan Pueblo, New Mexico

QUESTION

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1. Can a funeral director or an assistant funeral director operate an ambulance or an ambulance service in an area where an ambulance service certificated by the State Corporation Commission is operating?
2. Are funeral directors who own ambulances and operate ambulance services with such vehicles required to obtain a certificate of public convenience and necessity from the State Corporation Commission in connection with such activity?

CONCLUSIONS

1. Yes.
2. No.

OPINION

{*123} ANALYSIS

The answers to both your questions may be made by analyzing Sections 64-27-25, N.M.S.A., 1953 Compilation (P.S.) and 67-20-5, N.M.S.A., 1953 Compilation. Section 64-27-25, in pertinent part provides:

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

* * *

C. Ambulances, hearses, funeral coaches, or any other motor vehicle belonging to, or operated by, any funeral director licensed pursuant to the provisions of Laws 1947, chapter 61 in connection with his business."

From this paragraph it is apparent that ambulances operated by funeral directors are exempt from the Motor Carrier Act (Section 64-27-1 through 64-27-81, N.M.S.A., 1953 Compilation).

This is made even clearer by Section 67-20-5, supra, which in pertinent part provides:

"A. 'funeral director' is a person, partnership, association, corporation or other organization engaged in, conducting or holding himself out as engaged in:

* * *

Owning ambulances or operating an ambulance service under his business as a funeral director. This subparagraph does not require a funeral director to own ambulances or operate an ambulance service, but if owned or operated by a funeral director, the provisions regulating motor carriers contained in sections 64-27-1 through 64-27-81 New Mexico Statutes Annotated, 1953 Compilation, do not apply."

It is therefore our opinion that funeral directors and assistant funeral directors may operate ambulance services in areas where certified services are available without being required to obtain certificates of public convenience and necessity.

Attorney General's Opinion No. 60-109 which holds to the contrary to the opinion stated above, was rendered prior to the enactment of the above quoted section of 67-20-5 supra. That statutory section overruled and superseded the opinion. Attorney General Opinion No. 60-109 is therefore overruled.

By: Myles E. Flint

Assistant Attorney General