

Opinion No. 71-13

February 3, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Howard A. Geis Director Traffic and Rate Division State Corporation
Commission P.E.R.A. Building Santa Fe, N.M. 87501

QUESTIONS

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Does the State Corporation Commission have authority to regulate the rates of farm livestock carriers for hire within the state?

CONCLUSION

Yes.

OPINION

{*21} ANALYSIS

The New Mexico Constitution grants the State Corporation Commission the following powers concerning rate regulation:

"The commission shall have power and be charged with the duty of fixing, determining, supervising, regulating and controlling all charges and rates of railway, express, telegraph, telephone, sleeping car and other transportation and transmission companies and common carriers within the state and of determining any matters of public convenience and necessity relating to such facilities as expressed herein in the manner which has been or shall be provided by law

The commission shall have power to charge or alter such rates, to change, alter or amend its orders, rules, regulations or determinations, and to enforce the same in the manner prescribed herein . . . N.M. Const., Art. 11, § 7.

This section gives the State Corporation Commission full power to regulate rates of "other transportation . . . companies and common carries within the state." In accordance with this constitutional grant of power, the Legislature has declared that the Commission is vested with the power to regulate rates of common carriers and contract carriers. Sections 64-27-6 and 64-27-24, N.M.S.A., 1953 Comp. (1969 P.S.). If livestock carriers are either common or contract carriers within the state, their rates are subject to regulation by the State Corporation Commission.

It is clear that a livestock carrier for hire must be either a common or a contract carrier. Section 64-27-2, N.M.S.A., 1953 Comp., defines "common motor carrier" as:

". . . any person who or which undertakes, whether directly or by lease, or any other arrangement to transport passengers or property **or any class {22} or classes of property** for the general public, by motor vehicle for hire over regular routes, under unscheduled service . . ." (Emphasis supplied.)

Section 64-27-14, N.M.S.A., 1953 Comp., defines "contract motor carrier" of property as:

". . . any person engaged in the transportation by motor vehicle of property for hire and not included in the term 'common motor carrier of property' as hereinbefore defined."

Neither the statutes nor the case law contain any restriction on "any class or classes of property" which would exclude farm livestock. Therefore, a livestock carrier for hire must be either a common or contract motor carrier.

It is true that Section 64-27-80, N.M.S.A., 1953 Comp. (1969 Supp.), when read alone, appears to make "farm livestock carrier" a special class apart from either common or contract carrier. We conclude however, that the effect of Section 64-27-80 is only to make "farm livestock carrier" a special class only for the purpose of exempting farm livestock carriers from the requirements generally applicable to common and contract carriers for obtaining permission to operate within the state.

This conclusion is based on several considerations. First, well established rules of statutory construction require that Section 64-27-80 be read in the light of all the provisions of the act and in light of the sections of the constitution creating the commission. Legislative purpose must be gleaned from a reading of all statutes and constitutional provisions covering the same subject matter. **Allen v. McClellan**, 75 N.M. 400, 405 P.2d 405 (1965). Thus, Section 64-27-80 must be interpreted in light of Article XI, § 7 of the New Mexico Constitution and all the other provisions of the Motor Carrier Regulation Act.

Article XI, § 7 grants plenary rateregulating power over commercial motor carriers to the State Corporation Commission. It is basic law that the Legislature cannot reduce jurisdiction specifically conferred by the Constitution. To read Section 64-27-80 to mean that the State Corporation Commission cannot regulate rates of livestock carriers, which clearly fall within the definition of either common or contract carriers, is to give that section an unconstitutional interpretation. This the courts will not do if there is an alternative interpretation which will render the section constitutional. **State ex rel. Nichols v. City Comm'n of Albuquerque**, 75 N.M. 438, 405 P.2d 924 (1965). Constitutional problems are avoided if Section 64-27-80 is construed as merely excepting livestock carriers from the statutory requirements for certificates of convenience and necessity and for contract carrier permits. Section 64-27-80(E) simply affirms the Commission's jurisdiction over insurance; it does not affect the

Commission's jurisdiction over livestock carriers vested in the Commission by Article XI, § 7.

Reading Section 64-27-80 in light of the other sections of the Motor Carrier Regulation Act produces the same interpretation. It is the declared policy of the Motor Carrier Regulation Act to:

". . . to confer upon the 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 in all matters whether specifically mentioned herein or not so as to: (1) Relieve the existing and all future undue burdens on the highways arising by reason of the use of the highways by motor vehicles; (2) protect the safety and welfare of the traveling and shipping public in their use of the highways; (3) carefully preserve, foster and regulate transportation and permit the coordination of transportation facilities."

Since this act is remedial, its provisions are to be construed liberally. **Mann v. Gordon**, 15 N.M. 652, 110 P. 1043 (1910). Section 64-27-80 should not be construed as a restriction on the Commission's power to "foster and regulate transportation" by rate regulation in absence of clear legislative intent to do so.

In summary, we conclude that the State Corporation Commission has {23} jurisdiction to regulate rates of livestock carriers for hire within the state.

By: Thomas Patrick Whelan, Jr.

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