

Opinion No. 72-43

September 7, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General Thomas Patrick Whelan, Jr.,
Assistant Attorney General

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

QUESTIONS

QUESTIONS

1. Are livestock which are transported from a ranch, farm or feed-lot to a packing house to be considered unprocessed farm products for purposes of Section 64-27-81?
2. Is it legal to divide a shipment of livestock weighing more than 15,000 pounds into shipments of less than 15,000 pounds and to transport these shipments at rates lower than those authorized by the Commission?
3. Is it legal for a livestock trader who has no carrier's certificate to purchase livestock for customers at a sale barn, transport the livestock to the customer, and add a transportation charge to the price of the cattle?

CONCLUSIONS

1. No.
2. No.
3. No.

OPINION

{*71} ANALYSIS

A general review of the commission's jurisdiction over livestock carriers and {*72} farm carriers will facilitate our response to these questions. Article XI, Section 7 of the New Mexico Constitution defines the commission's jurisdiction and duties regarding the motor carrier industry:

"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, sleepingcar 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 change 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. . ."

This section gives the commission plenary powers to certify and regulate "other transportation . . . companies and common carriers within the state." In accordance with this constitutional grant of power, the Legislature declared the commission vested with the power to certify and regulate common and contract carriers. Sections 64-27-6 and 64-27-24, N.M.S.A., 1953 Comp. The Legislature also established procedures for the certification of these carriers and the regulation of all aspects of their business. Section 64-27-1, et seq., **supra**.

In 1955 the Legislature created a special class of common or contract carrier -- the farm-livestock carrier. Laws 1955, Chapter 198, Section 1 (formerly Section 64-27-80). The farm-livestock carrier was defined as a motor vehicle which transported livestock, farm produce, dairy products, farm machinery, or several other similar articles. The farm-livestock carrier was not required to obtain a certificate of convenience and necessity; a certificate of registration was issued automatically upon satisfaction of the insurance requirements imposed by the commission.

On February 3, 1971, this office issued an opinion concluding that Laws 1955, Chapter 198, Section 1 did not, and could not, exempt farm livestock carriers from the commission's jurisdiction over carriers. Opinion of the Attorney General No. 71-13. The act's only effect, we concluded, was to make special provision for the certification of these carriers; the act did not deny or change the commission's power to supervise the rates and services of farm livestock carriers.

On April 8, 1971, the Legislature amended Laws 1955, Chapter 198 to delete livestock carriers from the special class of common and contract carriers which originally included both farm and livestock carriers. Laws 1971, Chapter 326, compiled as Sections 64-27-80 and 64-27-81, N.M.S.A., 1953 Comp. Section 64-27-80 no longer applies to livestock carriers unless they are vehicles hauling lots of less than 15,000 pounds. Section 64-27-81, **supra**. Thus, livestock carriers hauling lots of more than 15,000 pounds are now regulated and certified as is any other common or contract carrier.

It is clear from this review that livestock cannot be considered unprocessed farm produce. The 1971 amendment to Section 64-27-80, **supra**, removed livestock from the list of commodities which farm carriers could transport. Section 64-27-81, **supra**, specifies that Section 64-27-80 does not apply to carriers hauling either unprocessed farm products **or** livestock in lots of more than 15,000 pounds. Clearly, the terms "unprocessed farm products" and "livestock" signify distinct classes of commodities. Livestock being transported from ranch, farm, or feed-lot to a packing house is not an unprocessed farm product.

It is equally clear that the division of livestock into lots of less than 15,000 pounds for transportation has no effect on the carrier's obligation to charge the rates fixed by the commission. We concluded in Attorney General Opinion No. 71-13 that Laws 1955, Chapter 198 (former Section 64-27-80) affected farm livestock carriers to a limited extent only. It changed the requirements for certification and insurance but did not affect the carrier's obligation to follow rate and service tariffs approved by the commission. Since livestock carriers hauling lots of less than 15,000 pounds {^{*73}} are still covered by Section 64-27-80, **supra**, the rationale of Attorney General Opinion No. 71-13 compels the same conclusion for them. Their certificates and insurance are governed by special provisions, but they must only charge rates approved by the commission. See Sections 64-27-7 and 64-27-34, **supra**.

A livestock trader who buys livestock for his customers and transports the livestock to them for a fee is transporting property for hire. He is, therefore, either a common or contract carrier depending upon the terms of his arrangement with his customers. See Sections 64-27-2 and 64-27-14, N.M.S.A., 1953 Comp.; Opinion of the Attorney General No. 71-13. As a common or contract carrier, he is governed by all applicable motor carrier laws and commission orders.