Opinion No. 72-50

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

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

QUESTIONS

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Are motor carriers who hold certificates of convenience and necessity and who follow commission approved tariffs for the operations conducted pursuant to their certificates, required to abide by these same tariffs when they operate within municipalities of less than 100,000 people?

CONCLUSION

No.

OPINION

*{*80}* ANALYSIS

This question involves an interpretation of Section 64-27-15, NMSA, 1953 Comp. That section provides:

"This act shall not apply to common or contract carriers of property or passengers operating within the limits of a municipality or incorporated village and within a radius of five [5] miles from the center of such municipality of this state of less than one hundred thousand [100,000] population according to the last preceding federal decennial cansus." Section 64-27-15, **supra.**

We interpret this statute as exempting from motor carrier laws those carriers who transport property or passengers between points located within the limits of a municipality or incorporated village of less than 100,000 population or between points located within a five mile radius of the center of the municipality or incorporated village of less than 100,000 population.

*{*81}* The section does not limit the exemption to those carriers who do not possess certificates of convenience and necessity for other operations, and we think it would be unfair to so limit it. The legislature has drawn the limits of the commission's jurisdiction at the city limits of municipalities of less than 100,000 people or at a line five miles from

the center of such municipalities. Within these municipal enclaves the motor carrier business is regulated solely by the laws of competition and the free market, absent municipal ordinances to the contrary. To force those carriers who possess certificates for operations outside the municipal area to observe the tariffs approved for these certificated operations when they operate within the municipal area might place them at a competitive disadvantage with those carriers who possess no certificate and can operate within the municipality totally free of regulation.

To interpret Section 64-27-15, **supra,** so as to place one segment of carriers at a competitive disadvantage is obviously unfair. We can think of no valid reason for imposing regulations on only some carriers operating within a municipality and not upon others. Certainly, the presence or absence of a certificate for operations outside the municipality is not a rational basis for discrimination between carriers competing within the municipality; nor does it bear any reasonable relation to the purpose of the carrier laws, which is, ". . . to carefully preserve, foster, and regulate transportation. . . ." Section 64-27-1, **supra.** Our courts have held that statutes with no reasonable basis for their classifications violate the equal protection clauses of our state and federal constitutions. See **State v. Sunset Ditch Co.,** 48 N.M. 17, 145 P.2d 219 (1944).

When a court is confronted with two possible interpretations of a statute, one of which would render the statute unconstitutional, the court will choose the constitutional interpretation. **State ex rel Nichols v. City Comm'n of Albuquerque,** 75 N.M. 438, 405 P.2d 924 (1965). Accordingly, we must reject an interpretation of Section 64-27-15, which makes it unconstitutional. The statute must be interpreted to allow carriers operating within the prescribed limits to compete free of regulation by the commission regardless of whether they hold certificates for operations outside the municipal limits.