

## Opinion No. [29-50]

October 17, 1929

**TO:** Office of the Attorney General of New Mexico

MOTOR VEHICLES -- Records to be preserved; Fees to be paid; "Motor Carriers" under Corporation Commission.

### OPINION

Reference is made to yours of the 14th inst. in which you ask for an opinion on the proposition of destroying records over six years old in your department and for the purpose of making room for later records. You say, with reference to this, that the office has not received permission from the legislature.

I am not aware of any statute authorizing the destruction of records in any department no matter how old such records may be. In addition to this, your attention is directed to sections 1420 and 1422 of the Codification of 1915 imposing penalties for the failure to deliver records to successors and to section 4803, which provides for the punishment of anyone who shall unlawfully alter, deface, mutilate, destroy, abstract or conceal certain records listed therein, among which we find any public record or any paper or writing duly filed. I assume that in each instance referred to in the sections to which reference has been made only such records as are required to be filed are protected.

You ask further relative to the fee to be charged for the registration of trucks operated upon the highways of the state in the year 1930 and succeeding years. Although you do not so specify, I assume your question to have reference to the interpretation to be placed upon subdivision 2(h) of section 28 of Chapter 119 of the Session Laws of 1929, which provides for the payment of a one-half fee --

"for each bus, truck or trailer which is used exclusively for the transportation of persons or property as a common carrier within the meaning of the laws of this state making special charges for the use of the public highways and which has been registered with the State Corporation Commission as such common carriers under the provisions of such laws."

In your letter you say "during the coming year all trucks will be issued a truck license and if they operate commercially they will be required to register with the Corporation Commission." A reading of the registration statute, that is Chapter 119 of the Laws of 1929, discloses no difference in license to the various types of motor vehicles. The difference comes merely in the fee to be paid for licenses. I do not find any reference to a commercial license nor do I find any requirement that trucks operated commercially be registered with the Corporation Commission. By chapter 129 of the Laws of 1929, it is required that certain "motor carriers" register with the State Corporation Commission and secure certificates of public convenience and necessity. A truck or other motor

vehicle may be operated commercially without falling within the definition of a "motor carrier" which is defined in section 1(d) "unless otherwise specified the term 'Motor Carrier' when used in this act shall mean and include every person that now or may hereafter own, lease, control, or operate any motor vehicle with or without trailer or trailers attached, upon any public highways of this state as a common carrier for the transportation of passengers or property for hire between fixed termini or over a regular route, even though there may be periodic or irregular departure from said termini or route."

You will note that in order to come within the definition "motor carrier" and thus be required to register the motor vehicle must be employed both as a common carrier and over a regular route or with fixed termini, it would seem that one may employ his motor vehicle commercially without coming within the definition of a motor carrier.

Turning back to subsection 2(h) of section 28 of Chapter 119, I am of the opinion that the buses, trucks, or trailers therein described, or intended to be described, and for the registration of which but a half fee is to be charged, are those operated by the motor carriers who have received from the State Corporation Commission a certificate of public convenience and necessity.

With reference to the fee to be collected you ask "should said owners be allowed credit for half the fee as the regular motor carrier who has registered with the Corporation Commission or should this department retain the entire fee plus an additional penalty." I do not understand that your department has any thing to do with the issuing of certificates of public convenience and necessity to the motor carriers. That falls under a different act and is in the jurisdiction of the State Corporation Commission which will collect the fee necessary and after which your department, upon the exhibit of or other satisfactory evidence of possession of such certificate, may issue the registration certificate or license provided for in Chapter 119 upon the payment of one-half of the fee which would otherwise be applicable to such vehicle and all fees collected by your department under the provisions of that act are to be disposed of as provided in Section 31 of the Act.