

## Opinion No. [29-46]

June 10, 1929

**BY:** J. A. MILLER, Assistant Attorney General

**TO:** Jones & Lindley, Mr. Ben Hill, Manager, Clovis, New Mexico.

MOTOR CARRIERS -- Farmers' trucks moving wheat from field to elevator not motor carriers.

### OPINION

Your letter of June 5, addressed to J. S. Baca, of the State Corporation Commission, Motor Transportation Department, has been referred to this office for an opinion interpreting the Motor Bus Law, House Bill No. 249, in its application to the situation described in your letter.

As I interpret your letter it is to the effect that the persons in whose behalf you call attention to this act are the farmers in Curry County who find it necessary to employ trucks at harvest time in order to move wheat from the combine to the grain elevator, and you say that this bill, House Bill No. 249, if carried out to the letter, will work an unprecedented hardship.

I fear that you have overlooked several provisions of this bill. I do not understand that the carrying out of the bill, even to the letter, will in anywise affect persons engaged in transporting grain as described. The requirements as to the applying for certificate of public convenience and necessity and the filing of a surety bond or policy of insurance apply only to motor carriers. In section 1 of the act (item d) we find motor carrier defined.

"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 highway of this State as a common carrier for the transportation of passengers or property for hire, between fixed termini, or over a regular route \* \* \*".

Persons operating trucks to carry the farms' wheat from the field to the elevator do not appear to me to come under this definition in that they are not operating between fixed termini over a regular route.

Section 42 of the act contains the following:

"Neither this Act, nor any provisions hereof, shall apply or be construed to apply to any of the following: \* \* \* (c) To motor vehicles used exclusively in transporting livestock or any farm or daily products from the place of production to market \* \* \*."

Unless the trucks mentioned by you should be employed in operations other than those mentioned in your letter or while such trucks are engaged only in such operations as you mentioned, they do not, in my opinion, come within the term 'motor carrier', as defined in the act, and are not under the necessity of securing a certificate of public convenience and necessity or of filing a surety bond or policy of insurance.