

Opinion No. 32-341

January 4, 1932

BY: E. K. Neumann, Attorney General

TO: Mr. Joseph S. Baca, Chairman, State Corporation Commission, Motor Transportation Department, Santa Fe, New Mexico.

{*124} Your letter of December the 4th, quotes Sub-paragraph (h) of Section 5 of Chapter 77 of Laws of 1931, which reads as follows:

"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 Commissions as such common carrier under the provisions of such laws, a license shall be issued under the provisions of this act upon payment of one-half of the fees otherwise applicable to such vehicles under the provisions hereof."

You desire to know whether or {*125} not a holder of a motor carrier transportation agents license, under Chapter 52 of the Laws of 1931, is entitled to the 50% reduction in fees referred to by the foregoing provision.

A motor carrier, or a common carrier, under the law and under the general law, is one who offers to carry goods for any person between certain termini and who is bound to carry for all who tender their goods and the price of carriage. Those who haul for compensation property of others, and who do not undertake to carry, or cause to be carried, for hire the property of all persons indifferently are not common carriers.

Under Chapter 52 of the Laws of 1931, a motor carrier transportation agent is nothing more nor less than a contract hauler. Such contract hauler may or may not accept employment and he may make such contract as he desires on the one and refuse to contract the other. A common carrier on the other hand is not permitted to refuse such employment so long as he is holding himself out to the public as a common carrier and his employment does not in the first instance depend upon his contract.

In addition to the foregoing, the said Sub-paragraph (h), herein quoted, is a part of the law which was passed in 1929. It can only have reference to the motor carriers act of the same year. It could not possibly refer to motor carrier transportation agents, for the reason that this act was not passed until 1931.

For all of the foregoing reasons, it is our opinion that motor carrier transportation agents are not entitled to the 50% reduction on license fees.

By: Frank H. Patton,

Asst. Attorney General

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