

Opinion No. 32-488

July 6, 1932

BY: E. K. Neumann, Attorney General

TO: Mr. Joseph S. Baca, State Corporation Commission, Santa Fe, New Mexico.

{*167} By your letter of July 5th, 1932, you raise the question as to whether "driverless" car concerns, dealing with the general public, should come under Chapter 52 of the Laws of 1931 in cases where such driverless cars operate outside of the corporate limits of any municipality.

The definition of a motor carrier transportation agent within the meaning of the Act is a person, firm or corporation who, for compensation, sells or offers for sale, or negotiates for, or holds himself out as one who sells, furnishes, or provides as principal or agents, transportation for persons or property over the public highways of this state, unless such person, firm or corporation is holding a Certificate of Public Convenience and Necessity.

The definition is very comprehensive, and it might be well said that such driverless concerns are selling, furnishing and providing transportation within the meaning of the Act.

Again, it may be argued that such concern is not engaged in furnishing, selling or providing transportation, but that it only rents or leases the means by which the transportation is accomplished.

As an illustration let us assume the case of a person who for some reason does not need his automobile for a period of sixty days. For a sum of \$ 50.00 a month that person rents his said automobile to B. Can it be said in this case that the owner of the car is a motor carrier or transportation agent within the meaning of the Act? The law, itself, provides that one act for compensation constitutes that person a motor carrier transportation agent within the meaning of the Act.

The case of "driverless" car concerns, however, is somewhat different. It is a known fact that these concerns make a charge for the use of their cars based upon the number of miles they are driven, usually with a minimum charge of so much per hour. Motor buses driven over a regular route also base their fares upon the number of miles driven by the passenger desiring transportation. There is no substantial difference between motor buses driven over a regular route and upon a definite schedule, and that of the "driverless" car concerns except that in one case a driver is furnished, and in the other the passenger drives the car himself. In both cases we believe that transportation is being sold.

As to the illustration above mentioned we express no opinion, but as to the case of driverless cars, it is our opinion that when engaged in selling transportation outside the

corporate limits of single cities, towns or villages they should be deemed motor carrier transportation agents within the meaning of Chapter 52, Laws of 1931.

We are of the same opinion with regard to companies or persons operating ambulances.

As to hearses, the situation is different. A hearse carrying a dead body is not engaged in transporting property for the reason that a dead human body is not property and we do not believe it could be construed as a person within the meaning of the Act.

By Quincy D. Adams,

Asst. Attorney General