

Opinion No. 35-898

February 14, 1935

BY: FRANK H. PATTON, Attorney General

TO: State Corporation Commission, Santa Fe, New Mexico. Attention: Mr. Robert Valdez.

{*43} Your letter of February 14th makes inquiry as to the jurisdiction of the State Corporation Commission over operators who lease or hire motor equipment for transportation purposes without compensation.

Our carrier law is set forth in Chapter 154 in the Session Laws of 1933 and the act, in part, is entitled as follows:

"An Act Relating to the Supervision and Regulation of the Business of the Transportation by Motor Vehicles for Hire Over the Public Highways of the State of New Mexico . . ."

This title gives notice of the fact that it is the intention of the legislature to regulate the business of transportation for hire. It may be said, therefore, without fear of successful argument to the contrary that unless it is "transportation for hire" such business of transportation is not within the contemplation of the act.

So far as the State Corporation Commission is concerned, the question as to ownership of the "means of transportation" is immaterial; except, of course, that the transportation in which your commission is interested is transportation by "motor vehicle."

If there is transportation for hire the business of transportation may be regulated by your department and it makes no difference whether the vehicle is owned or leased by the operator.

Where such transportation is not for hire there can be no regulation by the State Corporation Commission under the carrier law and we may further add that you have no right to attempt regulation of the lessor of the vehicle. This is for the reason that the lessor of the vehicle is not engaged in the business of transportation but is only furnishing the "means of transportation."

The above is, in our opinion, in line with the recent decision of the Supreme Court of this state in Cause No. 3980, entitled Roeske, doing business under the firm and style of U-Drive-It Car Company vs. J. D. Lamb, et al., and it is also in line with the views which have always been entertained by the writer.

We herewith enclose copy of opinion in the said Cause No. 3980.