Opinion No. 35-918

February 27, 1935

BY: FRANK H. PATTON, Attorney General

TO: Mr. Ralph E. Davy, State Labor Commissioner, Santa Fe, New Mexico.

*{*47}* We are in receipt of your letter of February 25th in which you enclosed a letter from the Southwestern Greyhound Lines, Inc., asking our opinion as to whether or not that company, being engaged in both interstate and intrastate commerce, comes under the Workmen's Compensation Act of New Mexico.

Section 156-111 of the 1929 Code reads as follows:

"This act shall not be construed *{*48}* to apply to business or pursuits or employments which, according to law, are so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged."

Our Supreme Court has never had occasion to interpret this statute in connection with the question raised by the Greyhound Lines.

It is my understanding and information that bus and truck lines acting as common carriers are not regulated by any federal act in the nature of a workmen's compensation act. The interstate railroads are regulated by such an act, being the Employer's Liability Act as passed by Congress in 1908. It has been held by the Supreme Court of the United States that interstate railroads cannot be included in any state workmen's compensation act for the reason that the federal act covering these is exclusive.

I find no cases directly in point on the question here involved, but the following is the general rule laid down in 28 R.C.L., Page 728, Section 24:

"Inasmuch as the states are not inhibited from regulating the relations of employer and employee, insofar as the federal government may not already have occupied the same field of legislation, it follows that a state compensation act may be considered effective and operative as to all such cases as do not come within the purview of any federal enactment. The control of Congress over interstate commerce is plenary and exclusive, but in the absence of any enactment regulating such commerce when conducted **by motor vehicles on the highway,** by aero vehicles through the air, or by vessels on the water, legislation regulating the relations of employers and employees who may engage in interstate commerce by these means is concededly within the province of the several states."

Also see 28 R.C.L. Page 726, Section 21, which reads as follows:

"No state may impose a direct burden on interstate commerce; but within certain limitations there remains to the states, **until Congress acts,** a wide range for the exercise of the power appropriate to territorial jurisdiction although interstate commerce may be affected. Granting that a state compensation act, in its application to employers who are engaged in interstate commerce, does in fact touch and affect such commerce, every reason would seem to be in favor of sustaining its validity and efficacy, provided only that no federal enactment shall have already occupied the same field of legislation. Accordingly, an employment in interstate carriage by motor vehicle might properly be held to be within the scope and operation of a state statute."

In our opinion, the New Mexico statute above referred to, Sec. 156-111, intends only to exclude from the operation of the New Mexico law such interstate commerce business as to be unconstitutional to attempt to affect, for example, the interstate railroads operating within this state and does not specifically exclude from the operation of the statute all persons engaged in interstate business.

Coming back to the specific case of the Greyhound Lines, any of their employees engaged in strictly intrastate business should, in our opinion, come under the Workmen's Compensation Act and their interstate employees might well be affected by the New Mexico statute in the event that there is no federal legislation which includes them.

By: J. R. MODRALL,

Asst. Atty. General