

Opinion No. 38-2009

July 19, 1938

BY: FRANK H. PATTON, Attorney General,

TO: State Corporation Commission Motor Transportation Department Santa Fe, New Mexico. Attention: Mr. Robert Valdez, Chairman

{*252} This is to acknowledge receipt of your letter of July 16th with enclosed correspondence relative to truck operations of Mr. Ogle, a mail carrier who operated between Alamogordo and Cloudcroft, New Mexico.

{*253} From the correspondence submitted it appears that Mr. Ogle is a mail carrier operating a star route between the points above mentioned and that he is likewise hauling property and passengers for hire. You state that he has never secured a permit pursuant to the provisions of Chapter 154, Laws of 1933, and wish our opinion as to whether or not he should be required to secure one or whether he is exempt under the provisions of Section 25 (b), as amended by Section 6 (b) of Chapter 224, Laws of 1937, which reads as follows:

"Neither this act nor any provisions hereof shall apply to be construed to apply to any of the following:

* * *

"(b) To United States mail carriers operating star routes, when not engaged in other business as common carrier, or contract carrier of property or passengers."

From the correspondence submitted to me, I am of the opinion that Mr. Ogle is engaged in the business of contract carrier within the meaning of Section 14, Chapter 154, Laws of 1933, and therefore is not exempt under the provisions of subsection (b) above quoted. I am unable to concur in the interpretation given this law by Mr. Clayton. Under the plain provisions of the act it is not necessary that Mr. Ogle be engaged in a separate enterprise as a common carrier. To the contrary, he falls without the exemption provision if he is engaged in other business as a contract carrier; nor do I construe this exemption provision to mean that all of Mr. Ogle's business, other than carrying mail, must be that of a contract carrier. To the contrary, I believe the provision excludes from the exemption any person operating any business as a common or contract carrier.

Trusting this answers your questions, I am,

By: RICHARD E. MANSON,

Asst. Atty. Gen.