

Opinion No. 38-1999

July 14, 1938

BY: FRANK H. PATTON, Attorney General

TO: Mr. E. J. House, Jr., Chief New Mexico State Police Santa Fe, New Mexico.
Attention: Sgt. H. K. Dalbey

{*249} You inquire what if any possible charge may be brought against passengers in vehicles carrying passengers in violation of the motor transportation laws, and particularly whether any charge may be brought against such passengers for refusing to give a statement as to payment {*250} of their fare which would incriminate the operator of the vehicle.

There is no charge which you may bring against the passengers for refusal to give such information. Refusal of a citizen to give information upon which a prosecution may be based is not a violation of law, and in my opinion it is not aiding and abetting in the sense contemplated by Section 47 of Chapter 224, Laws of 1937, amending Section 47 of Chapter 154, Laws of 1933. Nor is a refusal to give information a "failure to obey an order" as contemplated by that section.

Your purpose as I understand it is to find sufficient evidence on which to prosecute the carrier. In my opinion a passenger who pays a fare unlawfully charged by a carrier is not an aider and abettor, and does not violate any of the carrier laws. Even if he were considered an aider and abettor under the section above referred to, however, I see no point in prosecuting the passenger since with the same proof you may prosecute the carrier.

As stated to you over the telephone a person refusing to divulge information when called upon to do so by the Commission or in a court of law may be punished for contempt but only by the court. Sections 29 and 30 of Chapter 154, Laws of 1933. But he may be so punished only when duly summoned to give evidence on a case or matter duly before the Commission or before the court.

By A. M. FERNANDEZ,

Asst. Atty. Gen.