

Opinion No. 42-4192

November 25, 1942

BY: EDWARD P, CHASE, Attorney General

TO: Mr. Don R. Casados, Chairman State Corporation Commission Santa Fe, New Mexico

{*283} We have your letter of November 18, 1942, wherein you submit a fact situation to us involving the proposed abandonment of a connecting pipe line of the Texas-New Mexico Pipe Line Company.

In view of this fact situation, you request an opinion as to whether Chapter 104, New Mexico Statutes Annotated, 1929 Compilation, requires application for authority to discontinue service as a condition precedent to the actual abandonment. In connection with this problem, I have also considered Article XI of the Constitution of New Mexico, but have found that such article does not require such a pipe line company to make application for authority to discontinue service as a condition precedent to the actual abandonment.

I have further carefully examined Chapter 104, New Mexico Statutes Annotated, 1929 Compilation, and find that this chapter does not require application for authority to discontinue service as a condition precedent to the actual abandonment. It is noted that Section 104-102, 1929 Compilation, declares such pipe lines to be common carriers and that the conveyance of oil and gas shall be in the manner and under the restrictions of this act provided. However, the act does not provide any procedure that requires authority from the Corporation Commission for such a common carrier to discontinue his business, although the Corporation Commission does have certain general board powers so long as such pipe line is being operated.

It is further noted that Section 116-404 1929 Compilation in connection with railroads that are common carriers, provides that the consent of the Corporation Commission must be obtained before {*284} a railroad can discontinue the operation of a road or part thereof. It is pertinent to note that the Legislature considered it necessary to insert such a specific provision in connection with railroads under our general common carrier laws in order to make the Corporation Commission's consent the condition precedent to the discontinuance of any line. The Legislature did not insert such a provision in connection with the Corporation Commission's power over pipe lines, which are also declared to be common carriers.

I have also examined all regulations of the Corporation Commission and I do not find any regulation prohibiting the discontinuing of service without the Corporation Commission's consent.

It is therefore my opinion that this pipe line company may, insofar as the State Corporation Commission's powers are concerned, abandon this line without obtaining the consent of the Corporation Commission.

By HARRY L. BIGBEE,

Asst. Atty. General