

**Opinion No. 44-4464**

February 24, 1944

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Don R. Casados, State Corporation Commissioner, Santa Fe, New Mexico

I have your letter of February 21, 1944, wherein you enclose a copy of a contract between E. J. Foster and the Malco Refineries, Inc. You ask our opinion as to whether the so-called lessee of the Malco Refineries, Inc. assumes full responsibility and control of the equipment of the lessor, E. J. Foster. In other words, a question is raised as to whether or not Mr. Foster is hauling for hire.

It is noted that the contract specifies that the trucks are in the exclusive possession of the lessee. The contract further would seem to indicate that the lessee was operating the trucks itself. However, I am unable to reconcile this provision with the further provision of the contract that the first party actually pays all sums of money in connection with the maintenance, repair, and even the operation of said trucks, and wages and/or salaries paid to drivers thereof.

It would appear that the actual arrangement is to deliver the products for a definite stipulated sum to certain points. The so-called lessee pays a definite rate per gallon to various parts. All expenses are paid by the lessor. In view of the fact that the contract specifies a definite amount for delivery of products to various places, it is my opinion that the so-called lessee only pays freight to the various destinations, and the lessor carries the gasoline for hire within the meaning of our statutes, and should comply with the statutes of this state pertaining to contract carriers.

With kindest personal regards, I am

By HARRY L. BIGBEE,

Asst. Atty. General