

Opinion No. 44-4568

August 31, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. Robert Valdez, State Corporation Commission, Santa Fe, New Mexico

In your letter dated August 30, 1944, you inquire whether a company performing the service of compressing bales of cotton to cotton gins and to the public in general, comes within the provisions of Sections 48-1601 to 48-1609 of the N.M. 1941 Compilation. Section 48-1601 provides as follows:

"Any mechanical plant, business or establishment operated within the state of New Mexico by any person, firm or corporation for the purpose of treating, processing or refining, or in any other way preparing for sale, use, transportation or marketing any agricultural products which are not the property of such person, firm or corporation, but which are treated, processed or refined for sale, use, transportation or marketing for a consideration, charge or fee to be complied with or paid by the owner, or owners, of such agricultural products, is hereby declared to be a public utility."

The ginning, baling and compressing of cotton are all steps in the processing or preparation of the same for sale, use, transportation or marketing. If the various steps were all performed by the cotton gin, any one of the steps would be sufficient to bring it within the provisions of the act, and if one step is performed by a different agency, the performance of that one step in the processing of cotton is sufficient to bring that agency within the provision of the act.

This is true whether we consider the matter from the standpoint of "processing" or from the standpoint of "preparing for sale, use, transportation or marketing," since these two terms are used in the same sense by the Legislature.

For a definition of the term "processing" and "preparation for market" see Moore v. Farmers' Mutual Manufacturing and Ginning Co., an Arizona case reported in 77 P. 2d 209.

I am, therefore, of the opinion that a company operating a cotton compress is a public utility and comes within the provisions of the above mentioned sections.