

Opinion No. 45-4760

July 20, 1945

BY: C. C. McCULLOH, Attorney General

TO: State Corporation Commission Santa Fe, New Mexico. Attention: Mr. Joe B. Garcia
Rate Clerk

{*110} Replying to your request for an opinion as to whether a certain pipe line corporation is a common carrier. For convenience we will refer to the corporation as the subject.

A review of the reports of the business conducted by the subject reveals that the subject complied with the "pipe-line" act, sections 68-301 -- 309 of the 1941 Compilation, for several years and apparently the only reason for the subject giving notice that it would not continue to make reports was because of the following conclusion of law found in the decision in Case No. 708, Civil Action, U. S. District Court, District of New Mexico:

"The fact that the Defendant, -- (subject) -- may have complied with the laws of the State of New Mexico respecting pipelines does not in any manner invalidate the contracts involved herein, and that said Defendant, -- (subject) --, is not a common carrier under the provisions of Chapter 104, New Mexico Annotated Statutes, 1929."

I have made a study of the pleadings in Case No. 708 and have been unable to find wherein any of the three persons concerned raised the question of common carrier. The matter of common carrier was injected into the case when plaintiff's attorney examined subject's accountant regarding the establishment of rate charged for transporting oil. Subject's accountant testified that subject was collecting oil in "little lines" from fifteen separate and distinct producers; that the oil, after being collected from the "little lines", was measured in the presence of the producer and an agent of subject before being turned into the big line for transportation to a refinery that paid subject for transporting the oil.

"A pipe line may become a common carrier even though it carries only oil purchased from others, if it has a monopoly upon the transportation and purchase of oil from a field." (U. S. v. Ohio Oil Co., 1913, 34 S. Ct. 956, 234 U.S. 548, 58 L. Ed. 1459.)

The State of New Mexico was not a party in Case No. 708, Civil, and the Corporation Commission is not bound by the decision therein in rendering an order concerning subject. (Res. judicata, 34 C. J. 742)

The subject having refused to make and file reports required by the Commission, it will be necessary for the Commission to secure the information by authorized procedure and upon that information render its decision.

"The administrative agency of a state authorized to regulate common carriers and public {*111} utilities may determine when a pipe line is a public utility or common carrier, subject to review by the courts." (Standard Oil Co. of Louisiana v. Louisiana Public Service Commission, 1923, 97 So. 859, 154 La. 557.)

By reason of the foregoing, it is my opinion that the subject has been a common carrier at all times up to and at the time of filing its last monthly report; that if the subject is continuing the same or similar business as heretofore transacted, it is now a common carrier and subject to Sections 69-301 -- 309 of the 1941 Compilation.

By THOS. C. McCARTY,

Asst. Atty. General