

## Opinion No. 46-4852

February 8, 1946

**BY:** C. C. McCULLOH, Attorney General

**TO:** State Corporation Commission Motor Transportation Dept. Santa Fe, New Mexico.  
Attention: Mr. Diego R. Gonzales, Chief Clerk

{\*185} Replying to your request dated January 10, 1946, for an opinion on the following two questions:

1. Is it necessary that an exclusive I. C. C. interstate carrier, operating entirely within the city limits (Town over 200 population), be required to obtain from the Corporation Commission a certificate of registration under the provision of Section 68-1309 of the N.M. 1941 Compilation?

Laws of 1933, Chapter 154 (Sec. 68-1309 of the 1941 Compilation), provides:

{\*186} "After the effective date of this act, no common motor carrier engaged exclusively in interstate commerce shall operate for the transportation of persons or property for hire upon any public highway in this state without first obtaining from the corporation commission a certificate of registration under the provisions of this act. \* \* \*"

Laws of 1933, Chapter 154 (Sec. 68-1325 of the 1941 Compilation), provides:

"Neither this act nor any provisions hereof shall apply or be construed to apply to any of the following: \* \* \*

(g) Trucks operating wholly within any incorporated city or town of the state or within any unincorporated town or village having a population of two hundred (200) people."

The opinion is therefore in the negative. However, it is my further opinion that the legislative intent was that they should be exempt from the tax, but should be subject to filing their I. C. C. permit, or a copy thereof, and obtaining liability insurance, as provided for similar common carriers.

2. Are those engaged under I. C. C. permits, exclusively engaged in interstate commerce, in transportation of trucks, automobiles, tractors, parts, accessories and equipment, restricted to initial movement in driveway, towaway, truckaway service required to obtain certificate of registration from the Corporation Commission, under Section 68-1309 of the 1941 Compilation?

There are three separate laws under which a subject may operate under the above question:

(a) Session Laws of 1941, Chapter 11 (Sec. 68-220 (e) of the 1941 Compilation), commonly known as the "caravan law," provides as follows:

"\* \* \* fee of \$ 7.50 for each such vehicle transported by use of its own power, and a fee of \$ 5.00 for each such vehicle carried in or on another vehicle, or towed or drawn by another vehicle and not transported in whole or in part by the use of its own power."

"\* \* \* This tax shall not be applicable to the transportation of vehicles carried on another vehicle operating under a State Corporation Commission permit as a carrier, duly licensed under the motor vehicle laws of the State, and for the operation of which a mileage tax is paid."

(b) Session laws of 1933, Chapter 154, as amended by Session Laws of 1937, Chapter 224 (Sec. 68-1309 of the 1941 Compilation); Subject may register I. C. C. permit and obtain certificate of registration and pay mileage tax as provided in Section 68-1346 of the 1941 Compilation, Cumulative Supplement 1945.

(c) Session Laws of 1943, Chapter 125 (Sec. 68-1529, 1941 Compilation, Cumulative Supplement 1945), when "such vehicles have been licensed in this state" and pay tax under section 68-1531 of the 1941 Compilation, Cumulative Supplement 1945.

It is my opinion that an I. C. C. carrier, as mentioned herein, may proceed under any one of the three statutory provisions above, without complying with either of the other two set forth.

Trusting that the foregoing answers your questions, I am

By THOS. C. McCARTY,

Asst. Atty. General