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STATE CAPITOL
PHOENIX, ARIZONA

January 29, 1969

DEPARTMENT OF LAW LETTER OPINION NO. 69-3-L (R-55)

REQUESTED BY: THE HONORABLE WILLIAM J. SCHAFER, III
Pima County Attorney

QUESTIONS:

1. Must a tow truck service operated in connection with an automobile repair or service business or a wrecking yard have a certificate of convenience and necessity from the Corporation Commission?
2. Are tow truck operators on the Sheriff's rotation call list required to have certificates of convenience and necessity issued by the Corporation Commission?
3. Would the Sheriff be in violation of any criminal statute if he placed on his rotation call list a tow truck operator who had not been issued a certificate of convenience and necessity by the Corporation Commission?
4. May a peace officer comply with the request of an owner of a disabled motor vehicle that the officer use his radio for the purpose of calling a towing service of the owner's choice?

ANSWERS:

1. No.
2. No.
3. No.
4. Yes.

Question No. 1 was answered in the negative by the Arizona Supreme Court in Arizona Corporation Commission v. S & L Service, Inc., 93 Ariz. 380, 381 P. 2d 104 (1963). In this opinion the Court upheld the constitutionality of A. R. S. Sec. 40-601(A)(8), which was amended in 1960 to provide that "...towing of disabled vehicles by tow trucks operated in connection with an automobile repair or service business or a wrecking yard shall be

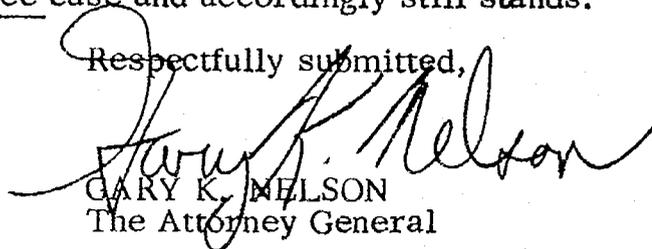
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deemed to be incidental to a commercial enterprise, and the operator thereof shall be deemed to be a private motor carrier when engaged in such operations."

Conclusions 2 and 3 follow from Conclusion 1. Our Opinion No. 62-24, dated May 23, 1962, correctly anticipated the decision in the S & L Service case, supra. Accordingly, Conclusion No. 2 of Opinion No. 62-24 stands. Conclusion No. 1 of that opinion should now be treated as modified to the extent that our Opinion No. 61-72 was, in effect, overruled by the S & L Service case.

Conclusion No. 3 of Opinion No. 62-24, holding that prior Attorney General Opinion No. 61-72 "does not mean and was not intended to mean, that a peace officer was prohibited from calling a towing service specified by the owner or operator of a disabled motor vehicle," was not affected by the decision in the S & L Service case and accordingly still stands.

Respectfully submitted,


GARY K. NELSON
The Attorney General

GKN:bh