

March 21, 1950

William T. Brooks, Chairman
Arizona Corporation Commission
Capitol Annex
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Brooks:

We acknowledge receipt of your letter of March 13, enclosing five leases which we are returning herewith.

You requested that we give you an opinion as to whether or not the Phil Kendrick lease was a "bona fide lease". In answering your query as to the validity and legality of said lease we assume that the other four leases which you sent us are substantially if not identically the same as the Kendrick lease, and the cursory examination we made of them would seem to indicate that such is the fact.

We feel that this lease is not valid, and is not consistent with the public interest for the following reasons: first, the lease has the effect of splitting up Mr. Rouse's certificate of convenience and necessity; secondly, it does away with the passenger carrier relationship; third, nothing appears therein to show whether the lessor or the lessee or both would be responsible in the event of injury to property or persons; fourth, the drivers' financial responsibility to respond to an injured party in the event of accident does not appear.

It is universally agreed that a certificate of convenience and necessity is issued mainly for the protection and furtherance of the public interest and secondarily for the benefit of the certificate holder. The purpose of these certificates is to give the public, through an appropriate administrative body (in this case, the Commission), control over common carriers in order to obtain from them the best possible service and in order to enforce upon them the laws, rules and regulations pertaining to carriers.

If under this lease, the drivers were construed to be independent contractors, and we feel sure that this was the intent of the parties and that this would be the legal effect of the same, then the result of the lease is to give the various lessees all the rights of a certificate holder, without the assumption by them of any of the burdens.

Although the lease contains a provision that the lessees agree to have ". . . due regard for all lawful rules and regulations promulgated by the Arizona Corporation Commission. . ." and al-

though the lease further provides that the lease and any assignments thereof shall be approved by the Commission, still we feel that this is not sufficient to bring the lessees fully within the control of the Corporation Commission. No person should be allowed to operate as a common carrier until he has fully complied with all the laws and conditions necessary for him to receive a certificate of convenience and necessity from the Commission.

There would be no objection, so far as we know, to a carrier compensating his employees on a fixed percentage of the gross receipts, as is provided in this lease. However, the relationship of employer and employee between the carrier and his drivers must be present. This relationship is clearly not present here.

In the following cases, attempts have been made by a carrier to lease its vehicles to independent contractors for compensation based on a percentage of the gross receipts and in each case the lease or rental agreement has been struck down.

Re Ocean Park Heights Land and Water Co. et al,
P.U.R. 1919 E., 245

City Cab Corporation v. Patrick, P.U.R. 1932 C,
1 at p. 18

Re Reasonableness of the Practices and Methods of
Transportation Companies, P.U.R. 1918 E., 782.

In conclusion, we state that our investigation has revealed that leases like the one which you have inquired about are not in the public interest and might, if approved, have a very damaging effect upon the quality of service rendered by the carrier attempting to affect such a lease. This lease has the further effect of making the certificate holder a mere "go between" as to the Corporation Commission and the drivers who would really be acting as the carriers. For these reasons and for the ones herein above enumerated, we respectfully advise that we do not believe that such a lease should be approved by the Commission.

Very truly yours,

FRED O. WILSON
Attorney General

CALVIN H. UDALL
Assistant Attorney General

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