

November 19, 1948

Mr. Yale McFate,
Member, Corporation Commission
Capitol Annex
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. McFate:

We are in receipt of your request for an opinion as to whether Mr. V. E. Krug will be required to obtain a certificate of convenience and necessity as a common carrier or a permit as a contract carrier to fulfill a proposed agreement between the Department of the Interior, Bureau of Reclamation, and said Krug.

It appears the proposed contract contemplates that Mr. Krug will furnish a helicopter to transport an employee of the Bureau on inspection trips over the power lines of the Bureau between Parker Dam and Phoenix, in connection with the maintenance of the transmission line. It also appears that Mr. Krug will be required to transport materials necessary for repairs at points along the line where repairs may become necessary, for which services and transportation Mr. Krug will receive compensation.

Clearly, Mr. Krug would not be classified as a common carrier by aircraft for the reason he will not hold himself out to the general public to engage in air commerce, as prescribed in your General Order No. 207, subdivision (D). However, the same order, subdivision (E) provides:

"'CONTRACT CARRIER BY AIRCRAFT' means any person engaged in the transportation by aircraft of property or persons for compensation and not included in the term 'common carrier by aircraft'."

We believe Mr. Krug would be classified as a contract carrier under the General Order and the decision of our Supreme Court hereafter referred to.

In the case of Quick Aviation Co. v. Kleinman, 138 P. 2d 897, the Supreme Court reviewed a case involving the operations of a person engaged in what is commonly known as "crop dusting", and in that opinion the court held that a person engaged in such enterprise was a contract carrier and it was necessary for him to have a permit as a contract carrier.

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In that case the court said:

"It (the carrier) was not a common carrier but rather a contract carrier for which a permit should have been issued, if anything".

Therefore, in view of the regulations contained in your general Order and the decision of the Supreme Court above-cited, it is our opinion Mr. Krug will be required to obtain a permit as a contract carrier before he may carry out his proposed agreement with the Reclamation Bureau.

Yours truly,

EVO De CONCINI
Attorney General

EARL ANDERSON
Assistant Attorney General

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