

May 4, 1949

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Jack Buzard, Director
Motor Carrier Division
Arizona Corporation Commission
The Capitol
Phoenix, Arizona

Dear Mr. Buzard:

We acknowledge your letter of March 26 asking for an opinion from this office on a list of some nine questions arising out of the newly enacted Motor Carrier Law, House Bill 135. Due to the large number of questions we will deviate from our usual policy and give questions and answers in the body of this opinion.

You ask first for a general interpretation of House Bill 135. It appears that House Bill 135 was intended to put teeth into the enforcement of the present State Motor Carrier Act by providing for cancellation of registration for violations of the Act and by providing for appointment of inspectors to go into the field and to enforce the law.

From a legal standpoint, however, one of the important changes brought about by House Bill 135 is the deletion of certain words in Section 66-507. This section formerly stated in part:

"* * * If, after a hearing on the application, the commission finds that the privilege sought will not endanger the safety of the public or interfere with the public use of the public highways, or impair the condition or maintenance of such highways, directly or indirectly, by impairing the efficient public service of any authorized motor carrier then adequately serving the same territory, and that the applicant is a fit and proper person to receive such permit, the permit may be granted upon such limitations, terms and conditions as the commission may prescribe."
(Emphasis Supplied.)

The underscored section has been deleted. By deleting this portion it would appear that the Legislature intended to allow contract carriers to operate without regard to common carriers holding certificates in the same area.

As in our former statute, most state laws protect the common carriers by preventing the approval of permits to contract carriers when there are sufficient common carriers in an area to give the required service. It is our opinion that under the Arizona law, as now amended, the Corporation Commission may not refuse to grant a contract carrier's permit solely for the reason that it might impair the efficient public service of an authorized common carrier.

Your first question:

- "1. As this is an EMERGENCY measure are we to immediately collect on
- a. ACC plates & replacements.
 - b. Application fees.
 - c. Registering ICC Certificates.
 - d. Transfer fees.
 - e. Lease application fees.
 - f. Renewal fees."

We are of the opinion that you should, as soon as practical and within a reasonable time, start collection on the above listed items. The law with its emergency clause became immediately effective on the day it was signed by the Governor.

Your second question:

- "2. What jurisdiction do we now have over a private carrier? Refer to your Opinions of November 3, 1948 and May 15, 1946."

It is our opinion that House Bill 135 has not changed your jurisdiction over private carriers. The Commission, as such, has practically no jurisdiction over private carriers, and there is nothing in this Bill which would result in any change. The words "motor carrier" used in the new act refer only to common or contract carriers, according to the definitions of Section 66-501. It would appear from a reading of the Motor Carrier statutes that the only requirement in the law for a private carrier is the filing of reports to the Highway Superintendent under Section 66-521.

Your question number three:

- "3. What powers do the Inspectors and the Division have in regard to the enforcement of the Act?"

The powers of inspectors in the enforcement of this Act are clearly stated in Section 66-513(c); they have the general authority of any peace officer. The inspector discovering a violation of the Act may either have the offender cited to appear before the Corporation Commission for violation of Commission rules or cite him to appear before a Justice of the Peace for the misdemeanor.

Your question number four:

- "4. Is there anything in this bill that would enable the Corporation Commission to collect fines that have been assessed prior to the passage of this Act, for violations of the Commission's rules, regulations and laws?"

We are of the opinion that there is nothing in this Act to give the Corporation Commission any additional power to collect fines assessed prior to the passage of the Act. As a general rule of statutory construction, no statute is retroactive unless such an intent is clearly expressed within the Act. Any such fines previously assessed may be collected by an action brought by the Attorney General under Section 69-260, ACA 1939. However, you may not apply the cancellation of registration section to force collection of fines assessed prior to the passage of this Act.

Your question number five:

- "5. Kindly give us the wording we should use on this new type of Citation covering violations under this Act."

The citation to be used in enforcement of this law by Commission action will be the same as it has been in the past. If you are in doubt as to the correct wording of such a citation, please submit your proposed citation, and we will be happy to give you our opinion of it. It would be advisable to add to the present citation however, a warning that failure to appear may result in cancellation of registration.

Your question number six:

- "6. What is the proper procedure and form of notification to the Highway Department, for cancellation of Registration under Sec. 66-513d."
- a. Does the Commission have the power to order the Highway Department to cancel registrations for failure to appear after Citation is served?
- b. If immediate action can be taken, or, does the Highway Department have a certain length of time to comply with our request?"

We are of the opinion that the Commission should issue a formal notice to the Highway Department stating that, pursuant to Section 66-513d you are hereby instructed to cancel the registration of _____ vehicle. It is unnecessary for the Commission to cite the reasons for such cancellation or to adopt any involved procedure. Under the Act, when the Commission finds that any motor vehicle has been operated contrary to the provisions of the law, rules, or regulations of the Commission, it may direct the Arizona Highway Department to cancel the registration of such vehicles. We are of the opinion that the Highway Department has no discretion in this matter but must comply with the directions of the Corporation Commission.

In answer to part "a" of your question number six, we are of the opinion that the Commission does have the power to order the cancellation of registration for failure to appear after a citation is served. In order to do so, however, the requirement of due process demands that there be proper service of the citation, that it is served upon the person by an officer with power to serve legal process and in the manner prescribed by law.

Answering part "b" of your question six, it is our opinion that the Highway Department should comply with the directions of the Corporation Commission without delay, allowing, of course, a reasonable time for the necessary clerical work, which should include a notification to the registrant that his registration was canceled by order of the Corporation Commission for failure to appear as cited.

Your question number seven:

- "7. For violations of this Act is it necessary to first Cite the parties to appear before the Commission before assessing fines?"

We are of the opinion that due process requires that a party be cited to appear before the Commission before any fine is assessed. The requirements of due process are not met unless there is both notice and opportunity to be heard. Such citation should be issued by the Commission upon receipt of a notice of violation from an inspector or other peace officer.

Your question number eight:

- "8. What procedure do we take for failure to appear before the Commission?"

We are of the opinion that any person properly cited to appear before the Commission who fails to do so may be fined for contempt of the Commission and punished by a fine of \$100.00 to \$5,000.00, as prescribed in Section 69-261 as well as cancellation of registration under Section 66-513d.

Your question number nine:

- "9. Kindly give us proper wording for Inspectors Commission Card. Would like it brief and yet showing authority under 135. Attached is the present Commission's card, which should be revised."

We believe that you should follow substantially the form used by the Division of Motor Vehicles, as per the card enclosed with your letter. On the reversed side of the card it might be advisable to provide for a picture.

Jack Buzard, Director
Motor Carrier Division
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Instead of the words "as an agent of Division of Motor Vehicles", it, of course, should read, "As an Inspector of the Arizona Corporation Commission". It should also read instead of "In the Enforcement of Motor Vehicle Laws and Regulations", "In the enforcement of Laws of this State Relating to Public Highway Transportation and the Rules and Regulations of the Arizona Corporation Commission".

The appointment should be by order of the Commission and signed by the Chairman; oath of office should be filed with the Commission; and it would also be advisable to require a bond.

If any of the above answers are too brief, or if you require any further information of any sort, please let us know and we will be happy to give you such information.

Yours very truly,

FRED O. WILSON
Attorney General

JOSEPH PYLE RALSTON
Assistant Attorney General

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