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February 17, 1983

INTERAGENCY

The Honorable Diane B. McCarthy, Chairman
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

INTERAGENCY

Mr. Juan Martin, Jr., Assistant Director
Motor Vehicle Division
Arizona Department of Transportation
1801 West Jefferson Street
Phoenix, Arizona 85007

Re: I83-015 (R82-192)

Dear Chairman McCarthy and Mr. Martin:

Each of you has requested our opinion whether your agency currently has any jurisdiction, pursuant to A.R.S. §§ 28-1371 through 28-1380, to license and regulate motor clubs. For the reasons which follow, it is our opinion that neither the Motor Vehicle Division nor the Corporation Commission has such jurisdiction. In fact, no agency presently has jurisdiction to enforce and implement the provisions of A.R.S. §§ 28-1371 through 28-1380 (the Motor Club Act).^{1/}

With respect to the jurisdiction of the Motor Vehicle Division, economic deregulation of the motor carrier industry occurred on June 30, 1982. As of that date, the Legislature assigned to the Motor Vehicle Division duties of safety and licensing over motor carriers, which duties were previously carried out by the Corporation Commission. These duties were transferred to the Motor Vehicle Division by three legislative acts "implementing" deregulation. These acts are Ch.286, 1982

1. This opinion has no effect on that portion of Ariz.Atty.Gen.Op. 77-143, which discusses the regulatory jurisdiction of the Department of Insurance over those motor club offerings which constitute insurance. The remainder of the opinion is disapproved by what we say herein.

Mr. Juan Martin, Jr.
Honorable Diane B. McCarthy
February 17, 1983
Page 2

Ariz. Sess. Laws (2d Reg. Sess.), which amended, in part, Ch. 207, 1981 Ariz. Sess. Laws (1st Reg. Sess.) which in turn amended, in part, Ch. 203, 1979 Ariz. Sess. Laws (1st Reg. Sess.). Chapter 203 was also amended, in part, by Chapter 286, referenced above. None of these acts provides for transfer of licensing and regulation of motor clubs to the Department of Motor Vehicles. Moreover, there has not been any other legislation to date which transfers to the Motor Vehicle Division or to any other agency the Corporation Commission's licensing and regulatory duties under A.R.S. §§ 28-1371 through 28-1380. Therefore, the Motor Vehicle Division lacks jurisdiction to regulate motor clubs.

With respect to the jurisdiction of the Corporation Commission, two recent decisions of the Arizona Supreme Court have cast serious doubt on the legality of the delegation to the Corporation Commission of licensing and regulatory jurisdiction over motor clubs. See Rural/Metro Corporation v. Arizona Corporation Commission, 129 Ariz. 116, 629 P.2d 83 (1981), vacating in part 129 Ariz. 119, 629 P.2d 86 (1980) (Rural/Metro); and American Bus Lines, Inc. v. Arizona Corporation Commission, 129 Ariz. 595, 633 P.2d 404 (1981) (American Bus Lines). In our opinion, these authorities effectively invalidate A.R.S. §§ 28-1371 through 28-1380.

In Rural/Metro, the court held that the Legislature is powerless to designate as a public service corporation any business which is not enumerated in Ariz. Const. Art. 15, § 2. The court approved earlier decisions which held that the Legislature cannot delegate to the Corporation Commission any powers which exceed "those to be derived from a strict construction of the constitution and implementing statutes." 129 Ariz. at 117 (emphasis by the court). Thus, the Corporation Commission was prohibited from exercising regulatory jurisdiction over private fire protection corporations which are not constitutionally designated as public service corporations.

In American Bus Lines, the court followed Rural/Metro and held that, after the effective date of deregulation (July 1, 1982), the Legislature could not vest in the Commission any regulatory jurisdiction or power over motor carriers which, on that date, ceased to be public service corporations. The holding of American Bus Lines is broader than that of Rural/Metro because in American Bus Lines, the court held that the Corporation Commission could not be given jurisdiction even

Mr. Juan Martin, Jr.
Honorable Diane B. McCarthy
February 17, 1983
Page 3

to regulate motor carrier safety, which is a police power that the state is authorized to exercise even over nonpublic service corporations.

Based on these authorities, we conclude that the Legislature cannot vest in the Commission regulatory powers over motor clubs, and that the statutes that purport to do that are unconstitutional because motor clubs are not enumerated in the Constitution of Arizona as entities subject to regulation by the Commission.

Sincerely,



BOB CORBIN
Attorney General

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