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April 19, 1972

DEPARTMENT OF LAW LETTER OPINION NO. 72-17-L (R-43)

REQUESTED BY: ROSE SANDOVAL
Director
Motor Carrier Division
Arizona Corporation Commission

QUESTION: Are common carriers of interstate commerce within the State of Arizona, whose vehicles are proportionally registered under A.R.S. § 28-221, exempt from the filing requirements of A.R.S. § 40-606?

ANSWER: No.

We held in Department of Law Opinion No. 65-8-L (R-62), January 13, 1965, that "interstate fleet vehicles proportionally registered under A.R.S. § 28-221 which are not used in intrastate operations in Arizona are exempt from the filing requirements of A.R.S. § 40-606 and the A.C.C. plate requirements of A.R.S. § 40-613. . . ." We are now asked to reconsider this opinion.

Proportional registration of interstate fleet vehicles is provided for by A.R.S. § 28-221.E:

Proportionally registered interstate fleet vehicles so registered and identified in accordance with this section and § 28-226 shall be deemed to be fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, no such vehicle shall be operated in intrastate commerce in this state unless the owner or operator thereof has been granted intrastate authority or rights by the corporation commission and unless the vehicle is being operated in conformity with such authority or rights.

The furnishing of certain information to the Corporation Commission by common motor carriers of interstate commerce is provided for in A.R.S. § 40-606:

A. No person shall operate as a common motor carrier of interstate commerce within this state without first having furnished the commission in duplicate and in writing:

1. Full information concerning the financial condition of such person, and ownership of the equipment and physical property used in the operation.

2. The complete route over which applicant desires to operate.

3. The proposed rates, schedules, and the time cards of the carrier.

4. Other information the commission requires for enforcement of the laws of this state regarding taxation and to protect the public health and safety.

B. The commission may make necessary and reasonable rules and regulations in respect to the operation of interstate motor carriers as it deems necessary and proper.

At the outset it should be noted that A.R.S. § 28-221.E is concerned with the registration of vehicles, whereas A.R.S. § 40-606 is concerned with obtaining information about persons who operate as common motor carriers of interstate commerce. That this is a viable distinction is evident from that portion of A.R.S. § 28-221.E which provides that

[i]n those instances in which a grant of authority is required for intrastate movement or operation, no such vehicle shall be operated in intrastate commerce in this state unless the owner or operator thereof has been granted intrastate authority or rights by the corporation commission and unless the vehicle is being operated in conformity with such authority or rights.

In other words, proportionally registered fleet vehicles used in intrastate operations in Arizona must be operated by someone with authority from the Corporation Commission to conduct intrastate common or contract carriage operations. Thus,

Opinion No. 72-17-L
(R-43)
April 19, 1972
Page Three

for intrastate operations there are two requirements: (1) a vehicle registered pursuant to A.R.S. § 28-221; and (2) an owner or operator with proper Corporation Commission authority.

The Supreme Court of Arizona, in Arizona Corporation Commission v. Catalina Foothills Estates, 78 Ariz. 245, 278 P.2d 427 (1954), citing Rowland v. McBride, 35 Ariz. 511, 281 P. 207 (1929), reaffirmed the general rule that repeals by implication are not favored and will not be indulged if there is any other reasonable construction. 78 Ariz. at 247. The Court also reaffirmed the rule that different statutes bearing upon the same subject matter should be so construed, if possible, as to give effect to all. 78 Ariz. at 248. See also: Arizona State Highway Commission v. Nelson, 105 Ariz. 76, 459 P.2d 509 (1969); Desert Waters, Inc. v. Supreme Court, 91 Ariz. 163, 370 P.2d 652 (1962).

The interpretation of A.R.S. § 28-221 reached in Department of Law Opinion No. 65-8-L (R-62) results in a repeal by implication of A.R.S. § 40-606. In the light of the above stated rules of statutory construction, it is our opinion that it was not the intent of the Legislature in enacting A.R.S. § 28-221 to exempt common carriers using proportionally registered fleet vehicles from the filing requirements of A.R.S. § 40-606.

A common carrier using a vehicle registered pursuant to A.R.S. § 28-221 must also comply with the filing requirements of A.R.S. § 40-606 if he is to operate that vehicle in the business of common carriage of interstate commerce within the State of Arizona. Department of Law Opinion No. 65-8-L (R-62), to the extent that it is inconsistent herewith, is overruled.

Respectfully submitted

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by F.S.

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