Opinion No. 66-102

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BY: OPINION OF BOSTON E. WITT, Attorney General Myles E. Flint, Assistant Attorney General

TO: Murray E. Morgan, Chairman, State Corporation Commission, State Capitol Building, Santa Fe, New Mexico

QUESTION

FACTS

A carrier files an application for a Contract Carrier permit supported by one contract with the State Corporation Commission, pursuant to Section 64-27-17, N.M.S.A., 1953 Compilation. A hearing is held pursuant to that section and the carrier is granted authority by the State Corporation Commission to transport the commodities specified in its application for the person designated in the one contract on file with the Commission and which was introduced into evidence at the time of the hearing.

In pertinent part Section 64-27-17, N.M.S.A., 1953 Compilation provides:

"No permit shall be granted unless the applicant has filed with the commission at least one (1) and not more than five (5) valid written contracts covering the transportation proposed, and establishes by competent evidence that the privilege sought will not impair the efficient public service of any certificated common motor carrier, then adequately serving the same territory."

QUESTION

May a carrier in the above described situation, add additional contracts, up to five, under this permit as issued by the State Corporation Commission without first making application to amend his permit and proceeding to hearing pursuant to Section 64-27-17, N.M.S.A., 1953 Compilation?

CONCLUSION

No.

OPINION

*{*136}* ANALYSIS

Under the Motor Carrier Act the State Legislature has delegated to the State Corporation Commission the responsibility of overseeing and regulating and supervising

the activities of the Motor Transportation Industry, with the avowed purpose that such regulation and supervision would relieve existing and future burdens on highways, protect the safety and welfare of the traveling and shipping public in the use of the highways and that such regulation and supervision would preserve and foster the Motor Transportation Industry and permit the coordination of various transportation facilities. In order to accomplish this purpose all *{*137}* common carriers or carriers of passengers or property for hire were required to come to the Corporation Commission to seek authority from that Commission to carry on their operations. Having been to the State Corporation Commission, the carriers could perform only those specific operations which were authorized in the certificate or permit issued by the State Corporation Commission.

The reason for limiting the operations of the carrier to the scope of its certificate was to permit the Commission to have full knowledge of the carriers available and authorized to perform services into any particular area within the state. Such knowledge would be necessary in order to determine whether or not additional carrier service would be needed into the area is a question, which involves not only the consideration of the public needs for additional services but a consideration of the effect of additional service on the economic operations of the carriers already operating within the area.

The general or most usual form of authority received from the State Corporation Commission is a certificate of convenience and necessity, Section 64-27-8, N.M.S.A., 1953 Compilation. Persons or legal entities issued certificates of convenience and necessity, generally are authorized to transport certain described commodities within a described area or over certain prescribed routes for any shipper transporting such commodities.

A second classification of regulated motor carriers is the contract motor carrier. From a reading of the statutes pertinent to contract carriers (Section 64-27-14 through 64-27-24, N.M.S.A., 1953 Compilation) it is apparent that such carrier operations are the exception to the general rule. This is made apparent in the language contained in Section 64-27-17, N.M.S.A., 1953 Compilation, wherein it is stated that contract carrier permits shall not be granted where it would impair the efficient public service of any certificated common motor carrier then operating within the same territory.

Keeping the above facts in mind the question under consideration is whether or not a carrier holding a contract carrier's permit authorizing it to transport certain commodities for a certain firm or business operation may add additional contracts, up to five, without seeking specific authority from the Corporation Commission and without proceeding pursuant to Section 64-27-17, with a hearing. There is no specific statutory authority or language which would indicate that such a procedure would be permissible. It is our opinion that the specific language contained in the statute indicates to the contrary. To reiterate, Section 64-27-17, N.M.S.A., 1953 Compilation, in pertinent part provides:

"No permit shall be granted unless the applicant has filed with the commission at least one (1) and not more than five (5) valid written contracts covering the transportation proposed, and establishes by competent evidence that the privilege sought will not

impair the efficient public service of any certificated common motor carrier, then adequately serving the same territory."

The above language imposes several obligations upon the parties involved in an application proceeding. First, it imposes upon the applicant the obligation of filing with the commission those valid written contracts, not exceeding five in number, which it has with various shippers. These valid contracts must be filed with the commission **prior** to the time that the commission grants the applicant authority to transport the subject commodities. Furthermore, the language contained in that sentence imposes an obligation upon the State Corporation Commission. That Commission must determine, **prior to granting a permit,** whether or not operations under the application would impair the efficient public service of any certificated common motor carrier within the same territory covered by the application. This must be done before the application is granted and not afterward. It is also inherent in the language contained therein, that this could only be determined upon hearing before the commission at which *{*138}* evidence was presented on which the commission could base an order.

The conclusion reached above, is consistent with the general theory and purpose of the Motor Carrier Act. To permit contract carriers to add contracts under a valid contract carrier permit without seeking the approval of the commission at a hearing held pursuant to the proper statutory sections, would subvert the purpose of the act. If such were permitted a person seeking to operate as a contract carrier could obtain a contract with a small dealer in some commodity and then come before the commission and prove a need for service under one contract which would not adversely affect other carriers operating within the same territory transporting similar commodities. Then it would be able, having obtained such limited authority upon such limited proof, to add a maximum of four more contracts, all of which could involve shippers of major importance in the same commodities and by doing so, divert this traffic from other carriers already operating within the territory. The Commission would not be given the opportunity to determine the effect of such operations upon the existing carriers. The contract carrier would be operating outside the scope of the authority specified in its contract carrier permit. As a result, the Commission could not adequately maintain control and supervision over the total transportation operations within this state by for-hire carriers and the general purpose for which the Act was created would have been defeated.

It is, therefore, our opinion that to permit contract carriers to add contracts without seeking formal approval of the Corporation Commission at a hearing on an application to amend their contract carrier permit, would be inconsistent with the law and inconsistent with the general theory supporting the enactment of the Motor Transportation Act. Anything to the contrary contained in Attorney General's Opinion 1949-50, No. 5211, is hereby specifically over-ruled.