



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

GERALD C. MANN
~~WILL WILSON~~
ATTORNEY GENERAL

Honorable Walton D. Hood
Law Enforcement Officer &
Chief of Inspectors
Railroad Commission of Texas
Austin, Texas

Dear Sir:

Opinion No. 0-1221
Re: Is the proposed Lease to be used
by truckers in the Lower Rio Grande
Valley an attempt to evade the Motor
Carrier Law?

This will acknowledge receipt of your request made to us which is as follows:

"A copy of a proposed lease to be used by the truckers in the Lower Rio Grande Valley in the transportation of cotton to various points throughout the Valley and/or the Port of Brownsville in Cameron County, Texas, is attached hereto.

"We respectfully request an opinion on this at your earliest convenience; however, in our judgment this is only an attempt to evade the Motor Carrier Law."

In reply thereto, this is to advise that a contract practically the same, with certain exceptions, which are immaterial for the purpose of this opinion, was involved in the case of Anderson-Clayton Company v. The State, 62 S. W. (2d) 107, and 82 S. W. (2d) 941.

In the first opinion in the cases above mentioned, the Commission of Appeals was asked in the third question there submitted, the following:

"3. Were the cross-petitioners operating the lease trucks for compensation or hire under provisions of Chapter 277, Acts of the 42nd Legislature, known as House Bill 335?"

To the question propounded the Court made this direct reply:

"The Third question certified presents a question of fact and not of law." (Underscoring ours)

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The instrument here submitted is subject, under proper pleadings, to an explanation of what is actually taking place.

Consequently the trial court or the jury hearing the facts proven would determine the issue, after the evidence has been heard.

Therefore, it is impossible, for this Department, without knowing the facts, to pass upon the question as to whether the contract submitted is an attempt to evade the Motor Carrier Law or not.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

s/ Geo. S. Berry

By

Geo. S. Berry
Assistant

GSB:N

APPROVED AUG. 11, 1939

s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE BY R.W.F. CHAIRMAN