

To make your question clear you offer the illustration that the port of Houston receives a large volume of freight moving by boat from the Atlantic seaboard, and it is there unloaded and immediately placed on motor vehicles for transportation to Dallas and other Texas cities, points of original destination. You mention that this freight universally has been accepted as freight moving in interstate commerce, which is undoubtedly correct. Highway Motor Freight Lines, Inc., desires to receive such freight at Houston (and other Texas cities under similar circumstances), transport the same over highways described in the certificate and deliver it at points in Texas on such highways. As an illustration, in a purely interstate transaction, it would pick up goods at Houston and deliver the same at Dallas without deviating from the highways named in its certificate.

The Highway Motor Freight Lines, Inc., holds a certificate from the Interstate Commerce Commission which would authorize the operation so far as that body is concerned. The validity of the restriction prohibiting the carrier from moving any commodities in interstate commerce between any two Texas points is thus brought into question.

Since the Federal Congress enacted the Motor Carrier Act of 1935, 49 U.S.C.A., Sec. 301, et seq., the Railroad Commission of Texas cannot concern itself with questions of public necessity and convenience with respect to purely interstate motor carriers, those questions being within the field occupied by the Congress. However, in the case of *Thompson vs. McDonald*, 95 Fed. (2d) 937, certiorari denied, it was held that the preservation and safety of the highways themselves are still within the jurisdiction of the Railroad Commission, and that this body may still deny the use of the highways to an interstate carrier when it is sufficiently shown that the preservation of the highways and safety of the traveling public would be endangered by the added traffic burden. As you know, the Austin and Waco Courts of Civil Appeals have followed that decision in a number of cases, in some of which writs of error were denied.

The certificate in question authorizes only the carrying of freight in interstate commerce from a point within this State to a point without its boundaries, and vice versa. This, of course, is a narrower authority than if the carrier were allowed to handle any and all interstate shipments regardless of the points where it might receive or deliver the same. Its use of the highways is correspondingly less. In granting the certificate upon such terms as it contained, the Railroad Commission necessarily found that the highways traversed could

properly handle the narrower service. On the other hand, there is absent any finding that the highways would be able to withstand the added burden of the heavier traffic which would follow from the broader authority, - that is, a certificate authorizing an unrestricted interstate operation over all the highways described.

Our opinion follows that the Railroad Commission has the authority to enforce the restriction contained in the certificate.

Yours very truly

ATTORNEY GENERAL OF TEXAS

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GRL:LW:wc

APPROVED JUN 18, 1940
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman