



**THE ATTORNEY GENERAL  
OF TEXAS**

GERALD C. MANN

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable James E. Kilday, Director  
Motor Transportation Division  
Railroad Commission of Texas  
Austin, Texas

911b, 5 (1940)

Dear Sir:

Opinion No. 0-2310

Re: Whether Railroad Commission  
should collect 10% of total con-  
sideration for lease of certifi-  
cate at its inception, or on  
monthly payments as they are made.

In your letter of April 29, 1940, you advise that the Rail-  
road Commission has just approved an application to lease a certificate  
of convenience and necessity for a period of five years from April 1,  
1940, the application showing the consideration to be Sixty (\$60.00)  
Dollars per month rental. You request our opinion as to whether or not,  
in collecting the ten (10%) per cent highway fee required to be paid in  
Section 5 of Article 911b, Vernon's Civil Statutes, you should collect  
ten (10%) per cent of Three Thousand Six Hundred (\$3,600.00) Dollars in  
one sum, the consideration for the full term of the lease, or whether  
you should collect just ten (10%) per cent of the Sixty (\$60.00) Dollar  
monthly rental as it is paid.

In section 5 of Article 911b, Vernon's Civil Statutes, re-  
lating to common carrier motor carriers, it is provided that "in case a  
certificate is transferred, that the transferee shall pay to the Commission  
a sum of money equal to ten (10%) per cent of the amount paid as a consid-  
eration for the transfer of the certificate." In our Opinion No. 0-1505,  
it was held that this provision applies to the lease of certificates of  
convenience and necessity. It is noted that under the terms of the  
statute, the ten (10%) per cent required to be collected is upon the  
amount paid, not ten (10%) per cent of the amount agreed to be paid. If  
the full ten (10%) per cent of the consideration provided to be paid  
over the full period should be collected in advance, and if the lease  
should be terminated by either or both of the parties before the end of  
the lease period, and the monthly payments cease, the State would have  
collected more than ten (10%) per cent of the amount paid as a consid-  
eration for the lease. We do not believe the statute was meant to make  
possible such a situation as that. In our opinion, said ten (10%) per  
cent should be collected only as the monthly lease payments are made.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/ Glenn R. Lewis  
Glenn R. Lewis  
Assistant

GRL:RS:wc

APPROVED MAY 8, 1940

s/ GERALD C. MANN

Attorney General of Texas

By RWR Chairman