



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Railroad Commission of Texas  
Austin, Texas

Gentlemen:

Opinion No. O-4110

Re: The issuance, in certain particulars, of specialized motor carrier certificates under House Bill 351, Acts of the 47th Legislature.

Your letter of September 25, 1941, requests a legal opinion from this department upon the question, appertaining to House Bill 351 of the 47th Legislature, stated by you as follows:

"QUESTION: Does the Railroad Commission have authority under this act to issue Specialized Motor Carrier certificates for those commodities named in Section 6 to wit: Livestock, mohair, wool, milk, livestock feedstuff, household goods, used office furniture and equipment, oilfield equipment, timber in its natural state, farm machinery and grain only, or does the Railroad Commission have authority in addition thereto to issue Specialized Motor Carrier certificates for the transportation of pipe used in the construction and maintenance of water lines and pipe lines, and in addition all other commodities which by reason of length, width, weight, height, size and other physical characteristics, require the use of special devices, facilities or equipment for their loading or unloading and all commodities which require special facilities or special motor vehicles for adequate, efficient or safe transportation as same is set out in Section 1?"

Your question arises because of the following provisions of House Bill 351.

Section 1 of the Act, which constitutes only a declaration of policy, describes the following commodities:

". . . Oil field equipment, household goods, and used office furniture and equipment, livestock,

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milk, livestock feedstuff, grain, farm machinery, timber in its natural state, wool, mohair, pipe used in the construction and maintenance of water lines and pipe lines, and in addition all commodities which by reason of length, width, weight, height, size, or other physical characteristic, require the use of special devices, facilities, or equipment for their loading or unloading, and all commodities which require special facilities or special motor vehicles for adequate, efficient, or safe transportation; . . ."

Section 2 of the Act adds paragraph (i) to Section 1 of the original Motor Carrier Act, as amended, and consists of a detailed definition of the term "specialized motor carrier." Paragraph (i) reads:

"(i) "Specialized motor carrier" means any person owning, controlling, managing, operating, or causing to be operated any motor-propelled vehicle used in transporting, over any public highway in this State, over irregular routes on irregular schedules, for compensation and for the general public with specialized equipment, property requiring specialized equipment in the transportation and handling thereof; provided, that the term "specialized motor carrier" as used in this Act shall not apply to motor vehicles operated exclusively within the incorporated limits of cities or towns; and, provided further the term "specialized motor carrier" as used herein shall include those carriers who engage or desire to engage exclusively in the transportation of livestock, livestock feedstuff, grain, farm machinery, timber in its natural state, milk, wool, mohair, or property requiring specialized equipment as that term is hereinafter defined, or any one, or more, of the foregoing named commodities.

"For the purpose of this Act, the term "specialized equipment" includes, but is not limited to block and tackle, hoists, cranes, windlasses, gin poles, winches, special motor vehicles, and such other devices as are necessary for the safe and proper loading or unloading of property requiring specialized equipment for the transportation and handling thereof.

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"For the purpose of this Act, the term "property requiring specialized equipment" is limited to (1) oil field equipment, (2) household goods and used office furniture and equipment, (3) pipe used in the construction and maintenance of water lines and pipe lines, and (4) commodities which by reason of length, width, weight, height, size, or other physical characteristic require the use of special devices, facilities, or equipment for their loading, unloading, and transportation.

"For the purpose of this Act, the term "oil field equipment" means and includes machinery, materials, and equipment incidental to or used in the construction, operation, and maintenance of facilities which are used for the discovery, production, and processing of natural gas and petroleum, and such machinery, materials, and equipment when used in the construction and maintenance of pipe lines."

Section 3 of House Bill 351 amends Section 6 (d) of Chapter 277, Acts of the 42nd Legislature, as amended by Chapter 321, Acts of the 45th Legislature (Article 91b, Section 6, Subsection (d), V.A.C.E.). It amends Section 6 (d) to read, in part, as follows:

"The Railroad Commission is hereby given authority to issue upon application to those persons who desire to engage in the business of transporting for hire over the highways of this State livestock, mohair, wool, milk, livestock feedstuff, household goods, used office furniture and equipment, oil field equipment, timber in its natural state, farm machinery and grain, 'Specialized Motor Carrier' certificates when it is shown by substantial evidence that there exists (1) a public necessity for such service, and that (2) public convenience will be promoted by the granting of said application."

It appears that Section 3 of House Bill 351, in amending Section 6 (d), does not include within its enumeration of commodities certain ones which are included within

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the description contained in Section 1 of the Act and in the definition contained in Section 2 of the Act. Hence your question.

Section 4 of the Act amends the motor carrier law by adding Section 5a thereto. Section 5a, among other things, provides:

"Section 5a. (a) The Commission is hereby given authority to issue upon application and hearing as provided in this Act, to those persons who desire to engage in the business of a "specialized motor carrier", certificates of convenience and necessity in the manner and under the terms and conditions as provided in this Act.

". . . .

"(b) No motor carrier shall transport oil field equipment, household goods, used office furniture and equipment, livestock, milk, livestock feedstuff, grain, farm machinery, timber in its natural state, wool or mohair, on any highway in this State unless there is in force with respect to such carrier and such carrier is owner or lessee of a certificate of convenience and necessity issued pursuant to a finding and containing a declaration that a necessity requires such operation or a contract carrier permit issued by the Commission, authorizing the transportation of such commodity or commodities; \* \* \*

"(c) The Commission shall have no jurisdiction to consider, set for hearing, hear, or determine any application for a certificate of convenience and necessity authorizing the operation as a "specialized motor carrier" or any other common carrier except as provided in the preceding paragraph unless the application shall be in writing and set forth in detail the following facts: (The requirements follow)

\* \* \*

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“(d) Before any such application shall be granted, the Commission shall hear, consider and determine said application in accordance with Sections 8, 9, 11, 12, 13, 13a, 14 and 15 of Chapter 277, Acts of the Forty-first Legislature, Regular Session, as amended (Art. 911b, Revised Civil Statutes of the State of Texas, 1925, as amended) \* \* \*”

Subsections (e), (f), (g) and (h) of Section 5a prescribe other regulations not pertinent to the question at hand.

It is at once manifest that Section 5a, added by Section 4 of House Bill No. 351, when read in connection with Section 1 and Section 2, the latter adding paragraph (i), authorizes the Commission to issue specialized motor carrier certificates for the transportation of the additional commodities in question. And no difficulty would arise regarding this authority of the Commission were only these several provisions involved.

We have only to decide if the amendment to Section 6(d), effected by Section 3 of House Bill 351, represents a limitation upon the other parts of the Act in this respect. In our opinion it does not.

Two underlying purposes are apparent in House Bill 351. One to create a new class of carriers, designated as specialized motor carriers, to engage in the business of transporting certain described commodities, the other to deal with special commodity carriers having their origin and rights in Section 6(d) of the motor carrier act.

True to its underlying purposes, House Bill 351 contains provisions, first, creating and regulating specialized motor carriers as a new subject of legislation appertaining not only to the commodities formerly the subject of special regulation in old Section 6(d) but others in addition thereto, viz, pipe used in the construction and maintenance of water lines and pipe lines and other commodities which by reason of length, width, weight, height, size, and other physical characteristics require the use of special devices, facilities or equipment; and, second, provisions specifically amending old Section 6(d) and bringing the subject matter

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thereof within the new requirements, as well as other provisions treating of the permits formerly issued under old Section 6(d).

The amendment to Section 6(d) describes only the commodities originally enumerated in Section 6(d) as to which special commodity permits had been issued. The amendment simply demonstrates, and effects, the legislative intent that the commodities described, formerly regulated under the old law, should henceforth be subject to the additional regulations consistent with the fundamental purpose of House Bill 351. This is further indicated by the quoted provision of Section 5a(b) as added by Section 4 of House Bill 351.

There is much duplication and repetition in House Bill 351. Numerous of its provisions are unnecessary to achieve the purposes of the act in the particulars under consideration. The fact of this duplication, however, cannot be given the effect of defeating its purposes. That the restricted subject matter of the amendment to Section 6(d) is covered by and included within the larger subject matter of Section 2 and Section 4 does not militate against our conclusion. There is obviously no more reason to consider the amendment to Section 6(d) as a limitation upon the act itself than to conclude, insofar as the subject under consideration is concerned, that the amendment to Section 6(d) may be entirely disregarded.

You are therefore advised that it is the opinion of this department, in specific answer to the question which you have propounded, that the Railroad Commission does have authority under House Bill 351 not only to issue specialized motor carrier certificates for the commodities named in Section 6(d), as amended, but also, in addition thereto, for the transportation of pipe used in the construction and maintenance of water lines and pipe lines, and other commodities which by reason of length, width, weight, height, size and other physical characteristics, require the use of special devices, facilities or equipment for their loading or unloading, and commodities which require special facilities or special motor vehicles for adequate, efficient or safe transportation, as defined in paragraph (1) as added by Section 2 of House Bill 351.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Zollie C. Steakley*  
Zollie C. Steakley  
Assistant

APPROVED

ATTORNEY GENERAL

ZCS:mp

APPROVED  
OPINION  
COMMITTEE  
BY *BWB*  
CHAIRMAN