



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS**

**PRICE DANIEL**  
ATTORNEY GENERAL

April 27, 1949

Hon. W. J. Murray, Jr., Chairman  
Railroad Commission of Texas  
Austin, Texas

Opinion No. V-814

Re: The authority of the  
Railroad Commission to  
set an application for  
a certificate of con-  
venience and necessity  
for hearing during a  
legislative session, an  
interested party hav-  
ing requested postpon-  
ment because his attor-  
ney is a member of the  
Legislature.

Dear Sir:

Your letter requesting the opinion of the Attorney General on the above question sets forth certain facts which, for brevity, we have condensed as follows:

On January 29, 1949, there was filed with the Motor Transportation Division of the Railroad Commission, an application for a certificate of convenience and necessity to operate a motor bus company between certain cities. The application was filed by a firm of attorneys, one of whom is a member of the 51st Legislature, now in session. On the call of the docket on February 1, 1949, a protesting motor bus company filed by and through its General Manager and its attorney, also a member of the 51st Legislature, a motion that the application not be set for hearing until ten days after adjournment of the 51st Legislature, on the grounds that its attorney was a member of the 51st Legislature and was presently in actual attendance on its regular session. A notation was then made by the Commission on the docket sheet to "Pass for duration of Legislature." On March 25, 1949, the applicant, by and through its attorneys, filed a motion that the order or notation on

the docket sheet passing the application until adjournment of the 51st Legislature be set aside and said applicant be given an early hearing.

Your specific question is as follows:

"Under the above facts does the Railroad Commission of Texas have authority to set said application for hearing prior to ten days after the adjournment of the 51st Legislature?"

Under the provisions of Article 911a, V.C.S., the Railroad Commission is given authority to set and hold hearings on applications for certificates of convenience and necessity for bus routes. Nothing is contained in its provisions which limits the authority of the Railroad Commission to set hearings.

It is evident that the application for continuance in this instance was made pursuant to the provisions of Article 2168a, V.C.S., which reads as follows:

"In all suits, either civil or criminal, or in matters of probate, pending in any court of this State at any time within ten (10) days of a date when the Legislature is to be in session, or at any time the Legislature is in session, it shall be mandatory that the court continue such cause if it shall appear to the court, by affidavit, that any party applying for such continuance, or any attorney for any party to such cause, is a member of either branch of the Legislature, and will be or is in actual attendance on a session of the same. Where a party to any cause is a member of the Legislature, his affidavit need not be corroborated. On the filing of such affidavit, the court shall continue the cause until ten (10) days after the adjournment of the Legislature and such affidavit shall be proof of the necessity for such continuance, and such continuance shall be deemed one of right and shall not be charged against the party receiving such continuance upon any subsequent application for continuance. It is

hereby declared to be the intention of the Legislature that the provisions of this section shall be deemed mandatory and not discretionary."

It will be noted that the above Statute is expressed in clear and unambiguous language and its meaning is clear and obvious. It is well settled in this State that such a statute must be applied and enforced as it reads, regardless of its policy or purpose or the justice of its effect. 39 Tex. Jur. 161, Statutes, Sec. 88. By its express provisions, the Statute applies only to "suits, either civil or criminal, or in matters of probate, pending in any court of this State."

Section 1, Article V, Constitution of Texas, provides in part:

"The judicial power of this State shall be vested in one Supreme Court, in Courts of Civil Appeals, in a Court of Criminal Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

" . . .

"The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the District and other inferior courts thereto."

It will be noted that the Railroad Commission is not named in the above provisions. In Carr v. Stringer, 171 S.W.2d 920 (Tex. Civ. App. 1943, error ref. w.o.m.) the court stated:

"We have observed that the 'judicial power of the State' is vested by the Constitution in named courts and such other courts as the Legislature shall create and prescribe their jurisdictions. Certainly in the creation of the Railroad Commission

the Legislature did not attempt to create any other court than those named in the Constitution. . . .

"We think the Railroad Commission is an administrative body or board, and although it is empowered to summon witnesses and hear evidence before passing upon administrative matters, such acts are not 'in the exercise of the judicial power'."

That case further held that a layman was not guilty of illegally practicing law (practicing without a license) because appearing before the Commission did not constitute the practice of law within the meaning of those statutes relating to the practice of law.

It is recognized that the Railroad Commission, in acting upon applications for certificates of convenience and necessity "exercises its powers and authority merely as an arm of the Legislature and as an administrative body". Railroad Commission of Texas v. Winkle, 57 S.W.2d 285 (Tex. Civ. App. 1933). In Southwestern Greyhound Lines v. Railroad Commission, 208 S.W.2d 593, (Tex. Civ. App. 1948, error ref.n.r.e.) it was expressly held that the Railroad Commission of Texas is not a court.

In view of the above decisions it is clear that the provisions of Article 2168a do not apply to hearings before the Railroad Commission upon applications for certificates of convenience and necessity. We have been able to find no statute limiting the authority of the Railroad Commission to set such hearings during a legislative session. Therefore, an interested party having made application for a continuance upon the grounds that its attorney is a member of the Legislature, it is within the sound discretion of the Railroad Commission to determine whether the hearing will be thus continued or set at an earlier date.

#### SUMMARY

The Railroad Commission of Texas is not a court. Carr v. Stringer, 171 S.W.2d 920 (Tex. Civ. App. 1943, error ref. w.o.m.), Southwestern Greyhound Lines v. Railroad

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Commission, 208 S.W.2d 593 (Tex. Civ. App. 1948, error ref. n.r.e.). Accordingly the provisions of Article 2168a, V.C.S., do not apply to hearings before it.

The question of whether a Railroad Commission hearing shall be set during or after a Legislative Session, an interested party having requested postponement because its attorney is a member of the Legislature, is a matter wholly within the sound discretion of the Commission.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

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