



**THE ATTORNEY GENERAL
OF TEXAS**

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AUSTIN 11, TEXAS

November 15, 1954

Honorable Olin Culberson
Honorable Wm. J. Murray
Railroad Commission of Texas
Austin, Texas

Letter Opinion No. MS-163

Re: Do railroad refunding bonds under submitted facts constitute a novation? Does subparagraph 7 of Sec. 20(a) Chapter 1 of Title 49 of U.S.C. supersede Art. 6527 V.C.S. in any part?

Gentlemen:

Your request for an opinion presents the following situation and questions:

"Application has been made to this Commission by the Panhandle and Santa Fe Railway Company for authority to issue \$20,984,000.00 General Income Mortgage Bonds and an application by the Gulf Colorado and Santa Fe Railway Company to issue five series of General Income Mortgage Bonds, aggregating a total of \$46,659,000.00.

"The applications, which should be returned to our files, are attached. Your particular attention is called to Article 6527, R.C.S., which requires that evidence of indebtedness or bonds wherein a lien is created are to be made payable at a time not exceeding 30 years. All of the bonds are dated July 1, 1953 and mature on October 1, 1995.

"Your opinion is respectfully requested on the following questions:

- "1. Do these refunding bonds constitute a novation?"
- "2. Do the orders of the Interstate Commerce Commission supersede Article 6527, R.C.S., 1925?"

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Both companies here involved are incorporated under the laws of the State of Texas and operate in interstate commerce. Interstate Commerce Commission F. D. 18403, 18402; Gulf, C & S. F. Railway Co., 271 I.C.C. 818 and 831; Panhandle & S. F. Ry. Co. Merger, 271 I.C.C. 818 and 831.

Application was made by both companies to the Interstate Commerce Commission for authority to issue the general income mortgage bonds, and on March 9, 1954, the Commission approved the applications. I.C.C. Finance Dockets 18402-3. The Reports of the Commission, incorporated by reference as a part of the orders, contain various findings of jurisdictional facts. One finding of particular interest is as follows:

"This bond was issued by applicant under and pursuant to, and is secured by a general mortgage made by it to the Guaranty Trust Company of New York . . . in satisfaction of a like amount of applicant's indebtedness to that company . . ."

In Warren Central R. Co. v. Texas Creosoting Co., 62 S.W. 2d 691, 694 (Tex. Civ. App., 1933), it was said:

"The giving of a new note by the original parties by way of renewal preserves the debt and the rights of the creditor to the property pledged, though the contract of pledge is not renewed . . . (citing authorities)

"In the absence of an express agreement to the contrary by the creditor, the acceptance of the note of one or more joint obligors bound for a pre-existing debt is not payment thereof, and does not release other joint obligors . . ."

"As there was no novation, the approval of the Railroad Commission was not necessary to make valid and second series of notes."

In the instant situation, the situation becomes even stronger for the parties remain the same and expressly agreed that no release would be effected by the refunding issue and the Interstate Commerce Commission by its fact finding negatives the possibility of a novation.

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To the same effect, City of Tyler v. Jester & Co., 97 Tex. 344, 78 S.W. 1058 (1904); Dallas County v. Cochran, 128 Tex. 50, 96 S.W. 2d 60 (1936).

Thus, your first question is answered in the negative.

Article 6527 reads, in part, as follows:

"When any railroad company in this State desires to make, issue, and sell any bonds, or evidences of debt, which are to become a lien on its property, it shall comply with the laws of this State regulating the same, and in addition thereto shall have said bonds prepared, signed by the president of the company, and attested by the secretary, with the seal of the company attached thereto. Each bond shall be numbered, beginning with number one, or the next highest number of any preceding bond issued by it, and continue consecutively until all are numbered. The bonds shall be dated, made payable at a time not exceeding thirty years from date and shall bear interest not exceeding six per cent per annum. . . ."

Section 20(a) of Title 49, Chapter 1, U.S.C.A., provides a comprehensive statute regulating the issuance of securities by common carrier railroads. Paragraph 2 prohibits the issuance of securities without compliance with that Act, the scope of the commission's authority, form of applications and contents thereof are specially set out.

Paragraph 7 reads as follows:

"The jurisdiction conferred upon the Commission by this section shall be exclusive and plenary, and a carrier may issue securities and assume obligations or liabilities in accordance with the provisions of this section without securing approval other than as specified herein."

This office has previously questioned the scope of authority of the Interstate Commerce Commission where the Constitution of Texas and statutes of this State were in direct contradiction to an order of the Commission. The case of Texas v. United States, 292 U. S. 522, 78 L. Ed. 1402, 54 S. Ct. 819 (1934) held the power of the Federal Government to be paramount in the field of interstate commerce and superseded both our Constitution and statutes.

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In the instant case, as in Texas v. United States, supra, the Commission has found that the area of regulation has direct relation to economy and efficiency in interstate commerce. The decision of the Interstate Commerce Commission, having become final, it would not be subject to a collateral attack.

See also the case of Seaboard Airline Railroad Company v. Daniel, 333 U. S. 118, 92 L. Ed. 580, 68 S. Ct. 426 (1948). Also of particular interest are two cases which have been presented to other states where the railroad companies had previously complied with the provisions of the Federal Regulatory Act and the order of the Interstate Commerce Commission was contra to the applicable State statutes. In each instance, the courts held that the particular state statute was superseded in part. Whitman v. Northern Centy. Ry. Co., 127 A. 112 (Md. Ct. of App., 1924); Minneapolis. St. P. & S.S. M. Ry. Co., 183 Wisc. 47, 197 N.W. 352 (1924).

Your second question is answered in the affirmative, Article 6527 R.C.S. is superseded in part by Section 20 (a) of Chapter 1 of Title 49, U.S.C.A.

Very truly yours,

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