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MBJ  
file # MC 17887-92  
ID # 17887

The Honorable Dan Morales  
Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

Dear General Morales:

Pursuant to Tex. Gov't. Code § 402.042, I am requesting, on behalf of the Railroad Commission, your opinion on a potential conflict that may exist between statutory provisions of the Motor Carrier Act (Tex. Rev. Civ. Stat. Ann. art. 911b § 13) and certain other state laws governing activities of the Texas Department of Transportation (TDOT), regarding insurance coverage for certain for-hire motor carriers.

Section 13 of the Motor Carrier Act contains a general requirement applicable to all for-hire motor carriers. It provides that "each motor carrier shall also protect his employees by obtaining workers' compensation insurance coverage as defined by the Texas Workers' Compensation Act (Art. 8308-1.01 et seq., Vernon's Texas Civil Statutes) or accidental insurance coverage in an amount fixed by the Commission from a reliable insurance company or companies authorized to write such policies in this State approved by the Commission." (emphasis supplied)

The provision authorizing accidental insurance coverage as an alternative to workers' compensation coverage was made effective on August 26, 1991, by the Texas Legislature. Pursuant to this statutory authority, the Railroad Commission has promulgated a regulation setting reasonable minimum accidental insurance limits, thereby allowing motor carriers to protect their employees at more reasonable premium costs than would otherwise be available. 16 T.A.C. § 5.181.

The potential conflict arises due to the interpretation of certain laws governing the activities of the TDOT. First, article 8308-3.23 of the Texas Workers' Compensation Act (effective January 1, 1991), requires that all contractors and subcontractors, working on a building or construction contract entered into by the State of Texas or a political subdivision thereof, certify in writing that

they provide workers' compensation insurance for all employees on the project. It is common practice for general contractors or subcontractors to utilize the services of for-hire motor carriers on these projects to transport sand, gravel, and related commodities being supplied for the project. Article 8308-3.23(d) outlines broadly what "building or construction" includes.

Thus, although the Texas Legislature amended the Motor Carrier Act to allow motor carriers an option with respect to employee insurance coverage, the literal provisions of the Texas Workers' Compensation Act may prevent for-hire motor carriers working on state projects from exercising that option. In practice, the TDOT is currently requiring that workers' compensation certificates be supplied by for-hire carriers working on state projects.

We have heard the arguments that these motor carriers should not be subject to the workers' compensation insurance requirement being imposed by the TDOT. First, it has been urged that for-hire motor carriers transporting commodities such as sand and gravel on behalf of the suppliers of those commodities are not "subcontractors" under the law. The idea is that the suppliers of sand and gravel are materialmen rather than subcontractors, and therefore, the for-hire motor carriers working for the suppliers would not be considered to be subcontractors either.

Second, it has been urged that the Texas Legislature, in amending the Motor Carrier Act, plainly evidenced its intent that all for-hire motor carriers may adequately protect their employees by subscribing to minimum required insurance coverage other than workers' compensation. Thus, the Motor Carrier Act insurance option amendment would supersede the Texas Workers' Compensation Act requirements (you will also note that the Motor Carrier Act amendment was enacted later in time than article 8308-3.23).

One additional statutory provision is relative to our inquiry. Tex. Rev. Civ. Stat. Ann. art. 6674k, (Vernon 1977), allows the TDOT to include in construction contracts such matters as it deems advantageous to the State:

The State Highway Commission shall prescribe the form of such contracts and may include therein as such matters as they may deem advantageous to the State. Such forms shall be uniform, as near as may be.

This provision raises a further question of whether, even if the insurance provisions of the Motor Carrier Act control over those of the Texas Workers' Compensation Act, the TDOT may nevertheless disregard the Motor Carrier Act and require workers' compensation coverage for motor carriers working on State projects.

In summary, I seek your opinion on whether for-hire motor carriers supplying sand, gravel, and similar commodities on behalf of the suppliers of these commodities, when working on state projects supervised by the TDOT, are required under art. 6674k to subscribe only to workers' compensation insurance coverage, or may they carry accidental insurance coverage pursuant to 16 T.A.C. § 5.181 to satisfy the requirements of art. 6674k.

Should you or your staff require any further information concerning this matter please do not hesitate to contact me.

Sincerely,



James E. (Jim) Nugent  
Commissioner

cc: Commissioner Krueger  
Commissioner Wallace