

# The State of Texas



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Geoffrey S. Connor  
Secretary of State

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November 19, 2003

OPINION COMMITTEE

The Honorable Greg Abbott  
Attorney General of Texas  
Post Office Box 12548  
Austin, Texas 78711-2548

**RQ-0133-GA**

FILE # ML-43345-03  
I.D. # 43345

Re: Request for opinion regarding the residency requirements for the directors of The Texas Mexican Railway Company ("Tex-Mex")

Dear General Abbott:

Tex-Mex (formerly known as the Corpus Christi, San Diego and Rio Grande Narrow Gauge Railroad Company) was created by a special act of the Texas Legislature (hereinafter "Incorporation Act") effective March 13, 1875.<sup>1</sup> Section 13 of the Incorporation Act provided that the railroad charter of Tex-Mex would remain in force for a period of ninety-nine years.

With the passage of the Texas Constitution of 1876, the Legislature was prohibited from passing local or special laws authorizing the incorporation of railroads. The law now applicable to railroads is set forth in TEX. REV. CIV. STAT. ANN., Title 112 (the "Railroad Act"). The general law of incorporation is the Texas Business Corporation Act ("TBCA").

The Incorporation Act did not set forth any residency requirements for directors. The TBCA does not currently set forth any residency requirements for directors. However, the Railroad Act, in article 6288, requires that a majority of the directors shall be resident citizens of this State and so remain resident citizens during their continuance as directors.

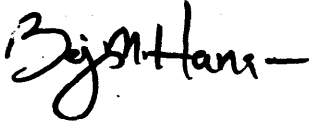
We respectfully request that your office issue an opinion addressing the issue of whether the provision in the Railroad Act requiring a majority of the directors to be resident citizens of this State is applicable to Tex-Mex. Enclosed with this request is (i) a letter, dated October 20, 2003, from Bradley J. Richards of the law firm Haynes & Boone, LLP requesting our opinion regarding the aforementioned matter; and (ii) our response letter, dated November 17, 2003, to Mr. Richards outlining the position of the Secretary of State that the TBCA is not applicable to Tex-Mex except to the extent provided by articles 2.01C and 9.14 of the TBCA; that the provisions of the Incorporation Act expired in 1974 and are no longer applicable to Tex-Mex; and that Tex-Mex must comply with the provisions of the Railroad Act requiring that the majority of the directors be resident citizens of this State.

<sup>1</sup> House Bill 714 found in Gammel's Laws page 704.

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If you have any questions regarding this request or need further information from the records of this office, please contact Ms. Lorna Wassdorf, Director, Business & Public Filings.

Very truly yours,



Benjamin M. Hanson  
General Counsel

Enclosures

cc:    Mr. Bradley J. Richards  
       Haynes & Boone, LLP  
       1000 Louisiana Street  
       Suite 4300  
       Houston, Texas 77002-5012

Ms. Lorna Wassdorf  
Director, Business and Public Filings  
Office of the Secretary of State