



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Railroad Commission of Texas
Austin, Texas

Gentlemen:

Attention: Mr. James E. Kilday,
Director Motor Transportation Division.

Opinion No. O-1677
Re: Requirements of Article 91b,
Section 13, Vernon's Civil
Statutes, respecting Work-
men's Compensation Insurance,
as affecting motor carrier
operating under certificate
issued by the Interstate Com-
merce Commission.

By your letter of November 10, 1939, you state that the holder of certificate No. 2694, United Transport Company, Inc., maintains its principal office in Oklahoma City, Oklahoma, but has twenty employees domiciled in this State; that you have requested that it file a Standard Workmen's Compensation policy of insurance to protect its employees, in accordance with the provisions of Section 13, Chapter 277, Acts of the Regular Session of the Forty-second Legislature, 1931, as amended by the Forty-third Legislature, 1933; that the operator contends that since it is operating under the jurisdiction of the Interstate Commerce Commission, it may not be required to file such policy of workmen's compensation insurance.

Upon this state of facts, you ask the opinion of this department upon the question whether such operator is subject to the provisions of Section 13 of the Act above referred to, respecting the protection of employees of a motor carrier by taking out workmen's compensation insurance.

Section 13 of the Act referred to, insofar as it concerns the question of workmen's compensation insurance, provides as follows:

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"Each motor carrier shall also protect his employees by taking out workmen's compensation insurance, either as provided by the Workmen's Compensation Laws of the State of Texas, or in a reliable insurance company authorized to write workmen's compensation insurance approved by the Commission."

The power conferred upon the Congress by the Constitution of the United States to regulate commerce between the states, when exerted, excludes and supercedes state legislation in respect to the same matter. Congress, in exerting its power to regulate such phase of interstate commerce, may circumscribe its regulation in such manner as to leave a part of the subject to state action. The purpose of Congress exclusively to regulate may be implied, but not unless the Federal measure, when fairly interpreted, is plainly inconsistent with state regulation of the same matter. *Cilvary v. Cuyahoga Valley Railway Company*, 292 U. S. 57, 54 S. Ct. 573, 574, 78 L. Ed. 1123.

There is nothing in the Federal Motor Carrier Act, 49 U. S. C. A., Sections 301-327, "remotely suggesting a purpose to regulate the liability of employers engaged in in this type of interstate commerce to their employees." As Congress has not seen fit to invade this field of regulation of interstate commerce by motor carriers, the authority of the State of Texas over the subject remains unimpaired, and the provisions of Section 13, above quoted, are applicable to interstate common carrier certificate holders. *State ex rel Washington Motor Coach Co. v. Kelly*, Director of the Department of Labor and Industries, (Sup. Ct. of Washington) 74 Pac. (2d) 16.

We trust that the foregoing sufficiently answers your inquiry.

Very truly yours

ATTORNEY GENERAL OF TEXAS

BY

R. W. Fairchild

R. W. Fairchild
Assistant

RWF:MR APPROVED DEC 14, 1939
Gerard B. Mann

ATTORNEY GENERAL OF TEXAS

