



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN**

**GERALD C. MANN  
ATTORNEY GENERAL**

Honorable T. B. Hill, Member  
Industrial Accident Board  
Austin, Texas

Dear Sir:

Opinion No. O-1729

Re: Is it necessary for the South-  
west Arkansas Electric Coopera-  
tive to maintain workmen's com-  
pensation insurance to cover  
the activities of its employees  
who come into the State of Texas  
for the purpose of servicing the  
short line running into Texas?

Your letter dated December 8, 1939, requesting  
the opinion of this department on the above stated ques-  
tion has been received.

We are setting out below a portion of the letter  
dated November 10, 1939, from Mr. John A. Sherrill, attorney,  
Little Rock, Arkansas, addressed to the Workmen's Compensa-  
tion Division, Austin, Texas, which letter was enclosed in  
your letter to us of December 8, 1939:

The Southwest Arkansas Electric-Co-  
operative Corporation is domiciled in  
Arkansas, but has been authorized to trans-  
act business in the State of Texas and has  
constructed a short line into Texas from  
the State of Arkansas at Texarkana. It  
does not maintain any men constantly in  
the State of Texas, but in its operations  
sends any of its employees necessary into  
the State of Texas to carry on the busi-  
ness there. They all, however, return  
to headquarters at Texarkana, Arkansas.

"The question has arisen before the Board as to whether or not it is necessary for this Cooperative to maintain a Workmen's Compensation insurance policy to cover the activities of its employees who go into the State of Texas for the purpose of servicing the short line running into Texas. Would or could the State of Texas permit employees of the Cooperative who are injured while working in Texas to recover compensation from the Cooperative under the laws of the State of Texas or would the State of Texas require such employee to pursue his remedies in the State of Arkansas since his activities in Texas would only be incidental to his Arkansas employment.

"It is my understanding that you law exempts employers of less than three employees from the provisions of the Texas Compensation Act. Would the Arkansas Corporation be required to have three employees employed solely in the State of Texas to make this law applicable to them, or would it be applicable to them if they employed three or more employees of the State of Arkansas who were used in the servicing of the lines, although at different times, in the State of Texas."

Assuming that the employees of the Southwest Arkansas Electric Cooperative Corporation servicing the lines running into the State of Texas are engaged in intra-state commerce, your inquiry resolves itself into the following two questions:

1. Is the Southwest Arkansas Electric Cooperative Corporation, who sends three or more of its Arkansas employees into the State of Texas for the purpose of servicing its short line running into Texas, subject to the Texas Workmen's Compensation Law?

2. If they are not subject to the act, may an employee of the Southwest Arkansas Electric Cooperative Corporation who is injured while working in Texas sue his employer under the laws of the State of Texas?

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Section 2 of Article 8306, Revised Statutes of Texas, relating to the Workmen's Compensation Law, reads as follows:

"The provisions of this law shall not apply to actions to recover damages for personal injuries nor for death resulting from personal injuries sustained by domestic servants, farm laborers, ranch laborers, nor to employes of any firm, person or corporation having in his or their employ less than three employes, nor to employes of any person, firm, or corporation operating any steam, electric, street or inter-urban railway as a common carrier. Any employer of three or more employes at the time of becoming a subscriber shall remain a subscriber subject to all the rights, liabilities, duties and exemptions of such, notwithstanding after having become a subscriber the number of employes may at times be less than three." (Underscoring ours)

Section 1, of Article 8309 reads in part as follows:

"'Employer' shall mean any person, firm, partnership, association of persons or corporations or their legal representatives that makes contracts of hire."

The Texas Workmen's Compensation Law is an elective act, and the legal relation arising between the employee, the employer and insurer, who bring themselves within the operation of the act, is contractual. The main objective of the act is to provide, in lieu of common law liability, certain and absolute compensation or benefits to employees or their dependents in cases where such employees have received injuries in the course of their employment resulting in disability or death. Any employer of labor, unless he is expressly excluded from the operation of the law, is subject to the act, and may become a subscriber to the association. By complying with the act, the employer becomes, except as to certain claims for exemplary damages, exempt from all common law or statutory liability on account of injuries suffered by his employees. The statute does not

use the word "regular" or "regularly employed" or "employed solely within the State" to characterize the continuity of the employment of the three or more employees. To exempt an employer from the operation of the act in Texas on the ground of reduction of number of employees, it would appear necessary to show that the number of employees has been permanently reduced below three.

If the Southwest Arkansas Electric Cooperative Corporation does not elect to come under the Texas Workmen's Compensation Law, the question then arises, would one of their employees injured in Texas have the right to sue under the Texas laws and recover a judgment in such suit?

This question is unique to the extent that Arkansas is one of the two remaining states that does not have a workmen's compensation act. If it were not for that fact the case of Bradford Electric Light Co. v. Jennie M. Clapper, 286 U. S. 145, 76 L. ed. 1028, 52 S. Ct. 571, 82 A. L. R. 696, would be exactly in point. The facts in the Clapper case, *usupra*, are identical with the situation you inquire about in your letter. We mention this case to distinguish it as certainly it would control in this instance if Arkansas had any form of workmen's compensation act.

Since the State of Arkansas does not have a workmen's compensation act, we feel that the rule of *lex loci delicti* would apply if an employee of the Southwest Arkansas Electric Cooperative Corporation were injured in Texas. It is thoroughly established as a general rule that the law of the place where the injury incurred is the law that governs and it applies with respect to the substantive phases of torts or the actions therefor. *Curtis v. Campbell*, 76 Fed. (2d) 84; *Loranger v. Nadeau*, 10 Pac. (2d) 63, at p. 65; *Bradbury v. Central Vermont Railway*, 12 N. E. (2d) 732. In the case of *Curtis v. Campbell*, *supra*, certiorari denied, 55 Sup. Ct. 649, 295 U. S. 737, Circuit Judge Woolley states the rule of the law of the place in the following language:

"The heart of the matter is that the law of the place of a tort gives a 'right of action' to one falling within its terms; and it does so without regard to the residence of the tortfeasor. In such case 'the law of the place where the right of action was acquired or the liability was incurred will govern as to the right of action,' Story on Conflict of Laws (9th Ed.) 775;

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American law Institute Restatement, Conflict of Laws, | | 449, 455; Texas & N. O. R. Co. v. Cross, 60 Tex. Civ. App. 621, 128 S. W. 1173; Loucks v. Standard Oil Co., 224 N. Y. 99, 120 N. E. 198; Slater v. Mexican R. R. Co., 194 U. S. 120, 126, 24 S. Ct. 581, 46 L. Ed. 900; Ormsby v. Chase, 290 U. S. 387, 54 S. Ct. 211, 78 L. Ed. 378, 92 A. L. R. 1499."

Both the Courts of the State of Arkansas and the State of Texas have recognized the rule of *lex loci delicti*. See Cameron, et al v. Vandergriff (Sup. Ct., Ark.), 13 S. W. 1092, Texas & N. O. R. Co., et al vs. Miller, et al, 128 S. W. 1165.

You are respectfully advised that it is the opinion of this department that the Southwest Arkansas Electric Co-operative Corporation may elect to come under the Workmen's Compensation Law of Texas. However, if the company does not choose to come under the Workmen's Compensation Act of Texas, those employees who are injured in Texas under the rule of *lex loci delicti* may pursue their claims for damages under the laws of the State of Texas.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (Signed)  
Frederik B Isely  
Assistant

FBI:GO

APPROVED: March 18, 1940  
Gerald C. Mann (Signed)  
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE B.W.B. CHAIRMAN