



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
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ATTORNEY GENERAL

Honorable C. R. McNamee
Director, Rate Division
Railroad Commission of Texas
Austin, Texas

OVERRULED BY S-165

Dear Sir:

Opinion No. 0-2954

Re: Whether carriers hauling for
the Federal Government must
charge the rates fixed by the
Railroad Commission.

In your letter of December 13, 1940, you enclose copy of an opinion written to you on April 13, 1938, by Assistant Attorney General Albert G. Walker, in effect holding that the Federal Government may contract for carrier services to be performed for it, without observing the rates approved by the Railroad Commission of Texas, where the contract is made pursuant to advertisement for bids. You now request our opinion as to whether carriers of intrastate freight for the Federal Government must demand and receive the charges approved by the Railroad Commission, or whether such carriers may disregard the rates and charges approved by the Railroad Commission in making contracts for the transportation of goods for the Federal Government. Your letter indicates that you are particularly concerned with the movement of freight for the United States Army and we will confine our opinion to the transportation of goods for the military. This is not meant to imply that the rule is otherwise as to other arms or departments of the Federal Government, merely that it may not be. For instance, it is at least possible that some such arms or departments may be instructed to comply with state regulations relating to rates and fares. At least, we would not wish to attempt to give an answer applicable in all instances of transportation for the Federal Government.

Among other things, Section 8 of Article 1, Constitution of the United States, provides that the Congress shall have the power to "provide for the common defense and general welfare of the United States; . . . To raise and support armies . . .; To provide and main a navy; . . . To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, . . ."

Section 5, Title 41, U.S.C.A., reads:

"§ 5. Advertisements for proposals for purchases and contracts for supplies or services for departments of Government. Except as otherwise provided by law all purchases and contracts for supplies or services in any of the departments of the Government and purchases of Indian supplies, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency, the articles or service required may be procured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals."

Section 1374, Title 10, U.S.C.A., reads:

"§ 1374. Transportation of Army stores by private parties. All transportation of stores by private parties for the Army shall be done by contract, after due legal advertisement, except in cases of emergency, which must be at once reported to the Secretary of War for his approval."

Section 561, Title 34, U.S.C.A., provides that "all provisions, clothing, hemp, and other materials of every name and nature, for the use of the Navy, and the transportation thereof, when time will permit, shall, except as otherwise provided by law, be furnished by contract, by the lowest bidder," and then given directions to be followed by the Secretary of the Navy in advertising for bids.

So far as your question is concerned we think it is immaterial whether the contract is made after advertisement for bids or otherwise. The Congress has enjoined upon the officers of the Federal Government the duty to make such contracts, by statutes plainly evidencing an intent for such officers to obtain the most economical transportation possible. The charges to be made for the service is a major factor in such contracts for carrier service. To allow the State to fix the rates and charges for the transportation service involved in these contracts would be to permit it to make the contract in large part. Such would constitute a direct interference with the Federal Government in its discharge of constitutional functions. The principles announced in such cases as *Louwein vs. Moody*, 12 S.W. (2d) 959; *Johnson vs. Maryland*, 254 U.S. 51, 41 S. Ct. 16; *Metcalf vs. Mitchell*, 269 U.S. 514, 70 L. Ed. 384; *Panhandle Oil Co. vs. Miss.*, 277 U.S. 218, 72 L. Ed. 857, are applicable.

In our opinion, carriers may contract with the Federal Government for the transportation of intrastate freight for the military without regard to the rates and fares approved by the Railroad Commission. And this is true whether the contract is made pursuant to advertisement for bids or not.

GRL:GO/cg
APPROVED DEC. 18, 1940
Attorney General of Texas

Yours very truly,
ATTORNEY GENERAL OF TEXAS
By Glenn R. Lewis
Assistant

Approved
Opinion
Committee,
By BWB, Chm