



THE ATTORNEY GENERAL
OF TEXAS

Gerald C. Mann
~~JOHN W. BROWN~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-3700

Re: Whether a specialized motor carrier license under House Bill 351, 47th Legislature, is liable for the intangible assets tax levied by Article 13, House Bill 8, 47th Legislature, or the gross receipts tax levied in Article 14 of said House Bill 8.

In your letter of June 17, 1941, you request our opinion as to whether a carrier holding a certificate issued under authority of House Bill No. 351, Forty-seventh Legislature, is liable for the intangible assets tax levied by Article XIII of House Bill 8 of the Forty-seventh Legislature, or the gross receipts tax levied by Article XIV of House Bill 8.

By the express terms of said Article XIV carriers who are required to pay an intangible assets tax under the laws of this State are exempted from the provisions of Article XIV requiring payment of a gross receipts tax. Hence we are immediately confronted with the question as to whether a specialized motor carrier operating under a certificate granted by the Railroad Commission pursuant to House Bill 351 is required to pay the intangible assets tax levied by Article XIII. In the last mentioned article it is provided that each common carrier motor carrier operating under a certificate of convenience and necessity issued by the Railroad Commission of Texas, doing business wholly or in part within this State, and every other individual, company, corporation or association doing business of the same character in this State, in addition to the ad valorem taxes on tangible properties which are or may be imposed upon them respectively by law shall pay an annual tax on their intangible assets and property. Does the specialized motor carrier come within the definition of

those affected by Article XIII? In our opinion, it does. A reading of House Bill No. 351, Forty-seventh Legislature, shows clearly that one operating under a certificate issued by authority of that Act will be engaging in the business of a limited common carrier, that is he will be a common carrier of certain designated commodities. The instrument issued to him is frequently referred to in the Act as a certificate of convenience and necessity. Section 5a(a), Section 5a(b), Section 5a(e), Section 5a(g). As a matter of fact in Section 1, embodying the Legislature's declaration of policy, it is declared to be the policy of the Legislature "to create a class of common carrier motor carriers designated as specialized motor carriers to engage in the business of transporting" certain properties. Our opinion is that such carriers should be required to pay the intangible assets tax levied by Article XIII but that they should be exempted from the gross receipts tax levied in Article XIV.

Presumably all such carriers will pay the intangible assets tax. We are not now confronted with the question of whether a specialized carrier which for some reason is actually not required to pay an intangible assets tax would be liable for the gross receipts tax, and we prefer not to attempt to answer that question until the taxing authorities are confronted with it.

Yours very truly

APPROVED JULY 11, 1941

ATTORNEY GENERAL OF TEXAS

s/ Grover Sellers

s/ Glenn R. Lewis

FIRST ASSISTANT
ATTORNEY GENERAL

By Glenn R. Lewis
Assistant

GRL:LM/cg

Approved Opinion Committee
By BWB, Chairman