

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

Gerald C. Mann
Attorney General

Hon. James E. Kilday, Director
Motor Transportation Division
Railroad Commission of Texas
Austin, Texas

Dear Sir:

Opinion No. 0-3751
Re: Filing fees accompanying
application for special-
ized motor carrier cer-
tificates.

In your letter of June 21, 1941, you re-
quest our opinion in response to the following ques-
tions:

"There are some Special Commodity Permittees who hold more than one permit. They are already filing JUST ONE of these "Grandfather" Applications accompanied by JUST ONE filing fee of \$25.00 and asking for JUST ONE "Grandfather" Certificate which, it is prayed, shall contain all rights bestowed by the MORE THAN ONE pre-existing Special Commodity Permits.

1. "Under these facts should we collect a filing fee on \$25.00 on each Special Commodity Permit or is one filing fee of \$25.00 sufficient?"
2. "Under these facts are we required to issue a 'Grandfather' Certificate on each Special Commodity Permit or may we issue just one of such certificates containing the pre-existing rights of all the Special Commodity Permits?"
3. "Assuming that one 'Grandfather'

Certificate may be allowed to encompass all the rights contained in more than one pre-existing Special Commodity Permit, may this consolidation be brought about where each of the Special Commodity Permits authorizes irregular operations with irregular schedules from different bases in such fashion as to give the new certificate holder the right to operate from each base?"

4. "Assuming as a fact, and it is a fact, that some Special Commodity Permittees held valid permits on January 1, 1941 which have since been cancelled out by the Commission for failure to maintain insurance: Are these permittees entitled to 'Grandfather' rights?"

Authority for the Railroad Commission to issue specialized motor carrier certificates is found in H.B. 351, Forty-seventh Legislature. The provision for converting special commodity permits into specialized motor carrier certificates is found in Section 5a(b) and reads:

"* * *, provided further that any person to whom a 'Special Commodity' permit for the transportation of any or all of said commodities had been issued under the provisions of Section 6, paragraph (d), Article 911b, Title 25, Revised Civil Statutes of the State of Texas, 1925, as amended, if such 'Special Commodity' permit shall have been in force and effect on January 1, 1941, and if such person or predecessor in interest may desire to continue in the business of a motor carrier of such commodity or commodities shall file an application for a certificate of convenience and necessity under the terms of this Act within sixty (60) days after the effective date hereof, it shall be the duty of the Commission to issue without further proof a

Hon. James K. Kilday, Director, Page 3

certificate authorizing the operation as a 'Specialized Motor Carrier' for the transportation of such commodity or commodities covered by the 'Special Commodity' permit held by the applicant, which 'Specialized Motor Carrier' certificate shall be issued to the applicant and include all the rights and privileges granted under said 'Special Commodity' permit."

The application fee mentioned by you is provided for in Section 5a(f) and reads as follows:

"(f) Every application for a certificate of public convenience and necessity under this Section shall be accompanied by a filing fee in the sum of Twenty-five Dollars (\$25), which fee shall be in addition to other fees and taxes, and shall be retained by the Commission whether certificate of convenience and necessity is granted or not."

To a certain extent we believe your second and third questions present administrative, rather than legal problems. Absent any special circumstances which would cause undue complications in the matter of converting the special commodity permits into specialized motor carrier certificates or in administering the Act and supervising the prospective operations of the carrier, we think it would be entirely competent for the Railroad Commission to accept and file a single application seeking the conversion of several special commodity permits into one specialized carrier certificate, and to issue a single certificate authorizing all of the operations theretofore conducted under several special commodity permits. This answer would apply to the set of facts embodied in your third question, the same as if the carrier has had only one base of operation. However, where serious administrative complications are or likely will be presented by such a grouping, in our opinion, the Commission would be acting within its authority in requiring an applicant to file the several appropriate applications.

Hon. James E. Kilday, Page 4

Answering your first question, it is noted that the fee is required to accompany each application and is not to be affected by the number of special commodity permits involved in the application. When one application is taken, the filing fee will be \$25.00 although it may be an application to convert several permits.

Our answer to your fourth question is a negative one. We think the "Grandfather" provision necessarily pre-supposes the continuance in effect of the permit since January 1, 1941. To hold otherwise would be to grant a certificate to one man without requiring him to prove convenience and necessity while denying it to another, with no ground for classification except that at one time the former had had a permit. Such a construction should not be given the statute unless absolutely required by its language. We think the provision is subject to a different and more reasonable interpretation, viz: it was meant to authorize the conversion into specialized motor carrier certificates of those special commodity permits which have been in legal existence since before January 1, 1941. In other words, it was meant to require the holders of permits issued since January 1, 1941, to prove convenience and necessity in order to secure a conversion- not to confer special rights on one who had held a permit at that time but who had subsequently surrendered the same or suffered its cancellation.

Yours very truly

ATTORNEY GENERAL OF TEXAS

GRL:LB

By (Signed) Glenn R. Lewis
Glenn R. Lewis
Assistant

A PROVED JUL. 23, 1941
(Signed) Grover Sellers
FIRST ASSISTANT ATTORNEY GENERAL

APPROVED OPINION COMMITTEE
BY H. W. B. CHAIRMAN