



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

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

Dear Sir:

Opinion No. O-4271

Re: The issuance of special permits by the Highway Department for the transportation of overweight, oversize or overlength commodities which cannot be reasonably dismantled.

You have requested an opinion from this department as follows:

"I am told that some years ago the Attorney General's Department held in an opinion that the State Highway Department had authority to grant special permits for the transportation of commodities that were overweight, overlength or overwidth over routes they deemed best suited for such transportation regardless of restrictions placed on carriers of such commodities by other agencies of the State.

"The result of this interpretation of the law has been to set aside the orders of the Railroad Commission restricting carriers from using certain highways in this State, which restrictions, I believe were made upon the basis of traffic reports furnished the Commission by the Highway Department.

"An investigation of many cases where carriers were on highways from which they were restricted by the Railroad Commission with loads which required special permits by the Highway Department, that such permits were obtained without making it known to Highway authorities that such carrier was not allowed to use the highway in question. Also, such investigations have disclosed that when applications are made for such special permits the applicant is never questioned regarding his authority from the Railroad Commission.

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"This matter is growing in magnitude and the Law Enforcement Division would appreciate the Commission's instructions on the following questions:

"1. Shall we disregard the Commission's orders restricting carriers from certain highways when the carrier has a permit from the Highway Department authorizing him to use said Highway?

"2. Shall we make an investigation to determine if the Highway Department would have routed the carrier over another route if it had had knowledge of the restriction?

"3. Shall we make an investigation to determine if the Highway Department had knowledge when the application was made that the Commission had restricted the carrier to the use of said Highway?

"4. When a carrier is intercepted on a highway over which he has been restricted, shall we require him to furnish proof that he made known to the Highway Department the fact that the Railroad Commission had restricted him from certain highways and that despite that the Highway Department would not route him over another route?

"5. When a carrier is intercepted on a highway from which he has been restricted by the Railroad Commission, shall we require him to attempt to obtain from the nearest highway department office a permit over another route before permitting him to proceed over the said restricted highway?"

Under date of April 8, 1937, this department rendered Conference Opinion No. 2999, wherein it was held:

"We think that it was both the spirit and the intention of the Legislature, in enacting the statute permitting the transportation over State highways of overweight or oversize or overlength commodities, to authorize the Highway Department in the issuance of the special permits to designate which highway is the shortest practicable route, without regard to the designated route of the carrier operating under a

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certificate of public convenience and necessity issued by the Railroad Commission; and that when the Highway Department has issued the special permit above referred to, permitting the hauling of overweight or oversize or overlength commodities, that the permittee is authorized to haul such load over the highways designated by the Highway Department."

We are enclosing a copy of this opinion, obviously the one referred to in your letter.

Under the applicable statutes, Article 827a, Section 2, Penal Code, and Article 6701a, Vernon's Annotated Civil Statutes, the duty of and authority for issuing these special permits is vested in the State Highway Department. Presumably in the administration of these acts proper and sufficient investigation will be made by the department before the issuance of the permits.

While Article 827a, Section 2, supra, enjoins upon the Highway Department the responsibility of seeing that the hauls made under such permits shall be by the "shortest practicable route," the Highway Department may not enlarge upon certificate rights as granted by the Railroad Commission, except as to routes to be traversed. It may not by the special permit authorize a person to transport property for hire who is without authority to do so from the Railroad Commission, or authorize a service to and from points not authorized by the Railroad Commission.

In reply to your question one, you should honor special permits issued by the Highway Department even though the carrier is thereby authorized to traverse routes not included in the certificate issued by the Railroad Commission, provided the carrier, if not transporting his own property, has authority from the Railroad Commission to transport the property at hand from and to the points involved.

Your questions two, three and four are answered in the negative.

If, under your question five, the carrier possesses a permit from the Highway Department, and if the conditions mentioned in our answer to question one are existent, the carrier should be permitted to proceed unmolested along the route contained in the permit from the Highway Department.

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY *Zollie C. Steakley*  
Zollie C. Steakley  
Assistant



ZCS:ej  
Encl.