



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

November 6, 1947

**PRICE DANIEL
ATTORNEY GENERAL**

**Hon. Ernest O. Thompson, Chairman
Railroad Commission of Texas
Austin, Texas**

Opinion No. V-426

**Re: Construction of
H. B. 298, Chap.
257, Acts of 50th
Leg., Reg. Ses-
sion, 1947, as
applied to certain
interstate motor
vehicle carriers.**

Dear Sir:

Your request for an opinion in connection with H. B. 298, Chapter 257, Acts of the 50th Legislature, Regular Session, 1947, presents five separate questions. For clarity we will restate the questions separately and immediately following each restatement we will give our answer.

"1. Does reciprocity (under H. B. 298) depend upon the state of registration of trucks operated by a foreign motor carrier where the trucks are registered in a state other than the domicile of such foreign motor carrier, or does it depend upon the state of domicile of the foreign motor carrier? As an example, a foreign motor carrier whose domicile is in the State of Illinois operates trucks into Texas which are registered in Louisiana, Oklahoma, New York, and other states. There is no reciprocity agreement between Texas and Illinois at the present time and there are reciprocal agreements between Texas, Louisiana, Oklahoma, and other states. The problem presented is whether or not the said foreign motor carrier domiciled in Illinois is required to pay plate and tax fees to the Railroad Commission on the trucks that are registered in Louisiana, Oklahoma,

or other states which have reciprocal agreements with Texas."

The 50th Legislature at its Regular Session in 1947 enacted H. B. 298, Chapter 257, amending Chapter 314, Acts of the 41st Legislature, Regular Session, 1929, as subsequently amended (Article 91b, V.C.S.), by adding a new section to be known as Section 18a, which reads as follows:

"18a. Reciprocity. Motor carriers of property for hire residing or domiciled outside of the State of Texas, who have authority from the Interstate Commerce Commission to transport property for hire to, from or between points in Texas, and whose operations in this State are limited to the transportation of property for hire in interstate or foreign commerce only under such authority, shall not be required to pay the special fees provided for in Sections 7, 17(a), 18 and subparagraphs (g) and (h) of Section 5a(a) of this Act; provided, however, this exemption from the payment of said fees shall not apply unless the States in which such foreign motor carriers reside or are domiciled shall likewise extend to motor carriers residing or domiciled in Texas exemption from the payment of the same or similar fees or expenses in their respective States; such exemptions from the payment of such fees in Texas shall be effective when the governmental agency or the authorized representative thereof of such foreign States having jurisdiction over the operations of motor carriers for hire shall certify in writing to the Railroad Commission of Texas that the exemption from the payment of such fees and expenses by such Texas carriers has been granted, and is in full force and effect. Provided, further, however, that this exemption shall not apply to the payment of filing fees for applications for certificates or permits to operate in this State.

"Nonresident motor carriers coming within the exemptions herein provided for shall not be required to display upon the vehicles operated in this State under the provisions of such exemption, identification plates issued by the Railroad Commission of Texas, and

the Commission shall not be required to furnish such carriers with such plates." (Emphasis ours)

Under the terms and provisions of the above quoted section, the exemption granted to nonresident motor carriers by way of reciprocity from payment of Railroad Commission plate and tax fees is dependent upon four distinct things. They are: (1) The person must be a motor carrier; (2) The motor carrier must reside or be domiciled outside the State of Texas; (3) His motor carrier operations in Texas must be exclusively in interstate or foreign commerce pursuant to valid and legal authority issued by the Interstate Commerce Commission; and (4) The state in which the nonresident motor carrier resides or is domiciled must grant like exemptions in the payment of the same or similar fees to motor carriers residing or domiciled in Texas. Nothing is contained in said section which in any manner makes reciprocity dependent upon the place of registering the nonresident carriers motor vehicles.

It is to be observed that the important thing in two of the above requirements is the place of residing or domicile of the nonresident carrier. The section provides that the exemption applies to motor carriers "residing or domiciled outside of the State of Texas" and that said exemption shall not apply "unless the states in which such foreign motor carriers reside or are domiciled" shall extend like exemptions to "motor carriers residing or domiciled in Texas." It therefore becomes necessary to determine the meaning of the terms "reside," "residing," and "domicile."

The terms "reside" and "residing" are elastic, and are to be interpreted in the light of the object and purpose of the statute in which such terms are employed. McGrath v. Stevenson, 77 P. (2d) 608 (Wash. 1938).

The Attorney General has previously construed the term "residing" as used in our registration of motor vehicle statute (Article 6675a-2, V.C.S.) to mean "Legal resident." See Opinion 0-1023, dated July 10, 1939, citing 54 Corpus Juris 708. Our courts have reached a similar result in connection with our venue statutes; Evans v. American Publishing Co., 13 S. W. (2d) 358 (Comm. App. 1929); Hennessey v. Campbell, 32

S. W. (2d) 390 (Tex. Civ. App. 1930); and have construed the term "resides" as used in the statute providing for the removal of a minor's disabilities to mean "legal domicile." Gulf, C. & S. F. Ry. Co. v. Lemons, 109 Tex. 244, 206 S. W. 75 (1918).

Domicile is defined by the American Law Institute Restatement, Conflict of Law, § 9, to mean the place with which a person has a settled connection for certain legal purposes, either because his home is there, or because that place is assigned to him by law. It is also stated in the Restatement on Conflict of Law, § 41, that a corporation is domiciled in the state where it is incorporated, and cannot acquire a domicile outside that state.

As applied to an individual, it has been held that one's domicile is the place where one has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. 13 Words & Phrases 261; State v. DeCasi-nova's Adm'x., 1 Tex. 401 (1846).

It is our opinion that the Legislature intended through its use of the terms "reside" and "residing" to mean "legal residence," and as so used they are synonymous with the term "domicile." 28 C. J. S. 7, § 2, 17 Am. Jur. 596, § 11; Am. Law Inst. Restatement, Conflict of Laws, § 9. Furthermore, by the very nature of the Act, legal residence or domicile is not coexistent in the same person in two or more states at the same time. Michael v. Michael, 79 S. W. 74 (Tex. Civ. App. 1904).

In answer to your first question you are therefore advised that reciprocity is dependent upon whether or not there is in existence a reciprocal agreement between Texas and the state of the legal residence or domicile of the foreign motor carrier rather than with the state where the vehicles of the foreign motor carrier are registered.

"2. If a foreign motor carrier has authority from the Interstate Commerce Commission to transport property for hire to, from, and between Texas points only (no other state) and whose operations in this state are limited exclusively to the transportation of property for hire in interstate or foreign commerce

only under such authority, and reciprocal agreement is in effect between Texas and the state of the domicile of such carrier, is such carrier required to have a permit or certificate issued by the Railroad Commission of Texas for authority to operate its trucks on the highways in Texas?"

H. B. 298, Chapter 257, Acts of the 50th Legislature, Regular Session, 1947, by its express wording deals with the exemption from payment by a foreign motor carrier of the fees mentioned and required in Sections 5a(g) and (h), 7, 17(a), and 18 of Article 911b, V.C.S. Nothing is contained in said Act amending, or purporting to amend, Article 911b, supra, as to the requirements of or necessity for a certificate of convenience and necessity or permit. On the contrary, the Act expressly provides that the exemption from payment of plate and special tax fees shall not apply to the payment of filing fees for applications for certificates or permits to operate in this State.

It has previously been decided that a motor carrier which has been granted authority by the Interstate Commerce Commission to transport goods, wares, and merchandise in interstate or foreign commerce by motor vehicle must, prior to commencing operation in this State pursuant to said interstate authority, obtain from the Railroad Commission of Texas authority to use our highways in such interstate operation, and to comply with the insurance requirements and safety regulations imposed by the Railroad Commission under Article 911b, supra. Ex Parte Truelock, 140 S. W. (2d) 167 (Tex. Crim. App. 1940), and authorities therein cited.

Nothing is contained in H. B. 298 which in any manner changes this rule. The foreign motor carrier, regardless of the existence of a reciprocal agreement between Texas and the state of its domicile, is still required to obtain from the Railroad Commission of Texas a certificate or permit authorizing the use of our State highways in interstate or foreign commerce.

Your second question is therefore answered in the affirmative.

"3. If a foreign motor carrier has authority from the Interstate Commerce Commission to

transport property for hire between points in Texas and points in other states and a reciprocity agreement between Texas and the state of the domicile of such foreign carrier is in effect, is such carrier required to have a permit or certificate issued by the Railroad Commission of Texas for authority to operate its trucks on the highways of Texas?"

Our discussion under Question No. 2 is equally applicable to Question No. 3. The answer is the same in each instance.

Your third question is therefore answered in the affirmative.

"4. If a foreign motor carrier has a certificate or permit from the Railroad Commission of Texas and there is a reciprocal agreement in effect between Texas and the state of the domicile of such foreign motor carrier, does the vehicle of such foreign motor carrier have to be registered (by equipment report or otherwise) with the Railroad Commission of Texas as being operated on a reciprocal basis."

Under the rules and regulations of the Commission, as well as the general requirements of Article 91b, supra, a motor carrier is required to register with the Commission as a part of the application for a certificate or permit a written list and description of the motor vehicles to be operated by the carrier under said certificate or permit. The reason for such requirement is obvious, because otherwise it would not be possible for the Commission to determine whether the motor vehicles to be used by the carrier meet the requirements of the law and the rules and regulations of the Commission as to safety requirements, and further, whether the highways of this State would withstand the added traffic burden proposed to be placed thereon.

Nothing is contained in H. B. 298, supra, which in any manner attempts to dispense with these requirements. These are all matters within the police power of the State, and our previous discussion under Question No. 2 is equally applicable here. See Ex Parte Truelock, supra.

Your fourth question is therefore answered in the affirmative.

"5. Where there is a reciprocity agreement between Texas and the state of domicile of a foreign carrier, is it necessary that the trucks of such foreign motor carrier operated in Texas have an identification card issued by the Railroad Commission displayed on such motor vehicles?"

Article 1690b, V.P.C., which is the penal portion of the Texas Motor Carrier Law, provides, in part, as follows:

"(e) The Commission shall prescribe an identification card which must be displayed within the cab of each motor vehicle, setting out the certificate or permit number and the route or territory over which the vehicle is authorized to operate, giving the name and address of the owner of said certificate or permit. It shall be unlawful for the owner of said certificate or permit, his agent, servant or employee, or any other person to use or display said identification card after said certificate or permit has been cancelled or disposed of. The identification card provided for herein may be in such form and contain such information as required by the Railroad Commission." (Emphasis ours)

House Bill 298, supra, in no way amends or modifies the requirements of the above quoted portion of Article 1690b, supra.

Your fifth question is therefore answered in the affirmative.

SUMMARY

(1) Reciprocity under H. B. 298, Chapter 257, Acts of 50th Legislature, Regular Session, 1947 (Section 18a of Article 911b, V.C.S.), is dependent upon the state of legal residence or domicile of the foreign motor carrier rather than the state of registration of the motor carriers' vehicles.

(2) A foreign motor carrier coming within the provisions of Section 18a, supra, is not relieved of the requirement of obtaining a certificate or permit from the Railroad Commission authorizing the use of Texas highways in interstate or foreign commerce.

(3) A foreign motor carrier coming within the provisions of Section 18a, supra, is still required to register with the Commission all motor vehicles operated by it in Texas by filing an equipment report with the Commission fully describing said motor vehicles.

(4) Section 18a, supra, in no way amends or modifies the requirements of Article 1690b, V.P.C., requiring identification cards to be displayed on all motor vehicles operated under the jurisdiction of the Railroad Commission.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Charles D. Mathews*
Charles D. Mathews
Assistant

CDM:jt

APPROVED:

Fagan Dickson
FIRST ASSISTANT
ATTORNEY GENERAL