



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**WAGGONER CARR  
ATTORNEY GENERAL**

August 13, 1963

Col. Homer Garrison, Jr.  
Director  
Texas Department of Public Safety  
Austin, Texas

Opinion No. C-125

Re: Under the provisions of S. B. 451, Acts 58th Leg., amending Art. 911b, V.C.S., if the owner of a truck leases such vehicle without a driver to any person other than a common carrier, contract carrier or specialized motor carrier, will such owner be considered to be transporting property for compensation or hire, and related questions.

Dear Col. Garrison:

In your recent letter you requested an opinion of this office on the recently enacted Senate Bill 451, Acts 58th Legislature, Chapter 451, page 1316, which amended Article 911b, Vernon's Civil Statutes, by adding paragraph (j) to Section 1. The questions you asked are as follows:

"1. Under this amendment, if the owner of a truck leases such vehicle without a driver to any person other than a common carrier, contract carrier or specialized motor carrier, will such owner be considered to be transporting property for compensation or hire?

"2. If the owner of a truck leases such vehicle to any person other than a common carrier, contract carrier, or specialized motor carrier and is employed by the lessee as a driver, will such owner be considered to be transporting property for compensation or hire?

"3. If the owner of a truck leases such vehicle without a driver, but with a provision that a driver must be secured through the Texas Employment Commission, to any person other than a common carrier, contract carrier or specialized motor carrier, will such owner be considered to be transporting property for compensation or hire?

"4. If the lessee of a truck not being a motor carrier or contract carrier secures a driver for such vehicle through Manpower, Inc., would the lessor be considered to be transporting property for compensation or hire?

"Manpower, Inc., is an organization that has as its primary business the furnishing of employees of different skills or trades to other business organizations upon request. Manpower, Inc., pays these employees and maintains all payroll records including the withholding of taxes and social security benefits. The business organization requesting an employee from Manpower, Inc., has complete control of the employee except that payment for such employee's services is made to Manpower, Inc., who withholds a commission or fee for handling the account. In practice, the employee performs his work for the business organization just as any other employee of such organization but draws no salary except from Manpower, Inc.

"5. In the four preceding questions, what would be your interpretation if the lessee was a common carrier, contract carrier or specialized motor carrier? "

Article 911b, Section 1 is the section of the Motor Carrier Act which defines the terms used in the Act. It provides that:

"When used in this Act unless expressly stated otherwise." (Then follow the various definitions)

Senate Bill 451 amended this Section 1 by adding a paragraph (j), defining the term "transporting property for compensation or hire" which provides in its material parts as follows:

" (j) The term transporting property for compensation or hire shall include the furnishing during the same period of time of equipment and drivers to persons, firms, copartnerships, associations or joint-stock associations other than common carriers, contract carriers, or specialized motor carriers for use in their carrier operations whether the equipment and drivers are furnished by the same or separate person, firm, co-partnership, association or joint-stock association, and their lessees,

receivers or trustees appointed by any court whatsoever owning, controlling, managing, operating or causing to be operated any motor-propelled vehicle.' "

The effect of this amendment is to make the term (phrase) "transporting property for compensation or hire" where it appears in Section 1 (g) and 1 (h) and other sections of the Motor Carrier Act, include the furnishing during the same period of time of equipment and drivers to persons, firms, etc.

The amendment provides that the transporting of property for compensation or hire shall include the furnishing during the same period of time the equipment and drivers "whether the equipment and drivers are furnished by the same or separate person, firm, co-partnership, association or joint-stock association and their lessees . . . owning, controlling, managing, operating or causing to be operated any motor propelled vehicle." It seems apparent that the Legislature by its language intended to include the furnishing of the equipment and the driver within the meaning of the term "transporting property for compensation or hire." The language would be meaningless under any other kind of an analysis. If both the equipment and drivers are furnished during the same period of time, even if furnished by "separate person, firm, . . ." etc., the transportation would be for compensation or hire under the language of the statute. In other words, to be unregulated transportation, within the meaning of Paragraph (j), the person owning the commodity being transported must furnish either the truck or the driver. If both the equipment and drivers are furnished by the same or separate persons other than the owner of the commodity being transported the transportation is for compensation or hire.

It is, therefore, our opinion that an owner of a truck who leases such vehicle without a driver will be considered to be transporting property for compensation or hire as he is furnishing "equipment" in the terms of the statute only if the drivers are being furnished by a separate person or firm other than the lessee. This, of course, does not include the furnishing of equipment and drivers to common carriers, contract carriers or specialized motor carriers for use in their carrier operations. (See answer to question No. 5)

In answer to your second question, it is our opinion that a person leasing a truck to be employed in the transportation of commodities over the highways of The State of Texas, and being employed by the lessee as a driver would be considered to be transporting property for compensation or hire over the highways of The State of Texas as he is, in addition to furnish-

ing the truck, also furnishing the driver (himself). He is furnishing both the "equipment" and "driver" within the terms of the statute. Again, this does not include the furnishing of equipment and drivers to common carriers, contract carriers or specialized motor carriers for use in their carrier operations.

Inasmuch as we have answered your first question to the effect that the leasing of a truck and the furnishing of drivers by the same or separate persons would be considered to be transporting property for compensation or hire, our answer to your third question must be in the negative. Here the drivers would be employed by the lessee. The fact that the Texas Employment Commission referred such drivers to the lessee would not mean that the Commission was furnishing drivers within the terms of the statute. Therefore, all we have here is the lease of the equipment, and, as the drivers are not being furnished by the same or separate persons, the transportation would not be considered for compensation or hire under this statute.

Our answer to question number four is in the affirmative. The truck being furnished by one person and the drivers furnished by Manpower, Inc., it would follow that both the equipment and drivers are furnished by separate persons which within the terms of the statute is considered to be transporting property for compensation or hire.

By virtue of the proviso in Paragraph (j) which reads: "other than common carriers, contract carriers, or specialized motor carriers for use in their carrier operations" if equipment and drivers are furnished to common carriers, contract carriers or specialized motor carriers, the operations described in your first four questions would not be included in the term "transporting property for compensation or hire" as used in said Paragraph (j), and said four questions would be answered in the negative.

We express no opinion as to whether the furnishing of such equipment and/or drivers to common carriers, contract carriers, or specialized motor carriers is a violation of any other section of Article 911b, Vernon's Annotated Civil Statutes.

#### S U M M A R Y

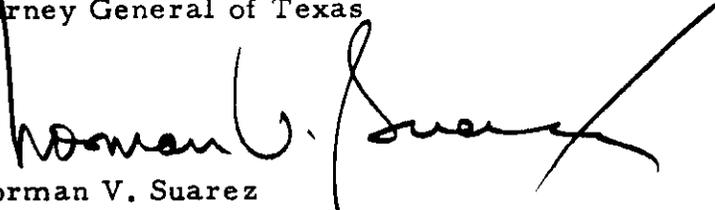
The furnishing of both the truck and drivers by the same or separate persons is considered to be the transporting of property for compensation or hire within the meaning of Article 911b, Section 1(j), Vernon's Civil Statutes, only

in the event such furnishing is to entities other than common carriers, contract carriers, or specialized motor carriers.

Yours very truly,

WAGGONER CARR  
Attorney General of Texas

By

  
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Assistant Attorney General

NVS:nb

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