



THE ATTORNEY GENERAL OF TEXAS

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April 28, 1975

The Honorable Wilson E. Speir
Director
Texas Department of Public Safety
P. O. Box 4087
Austin, Texas 78773

Opinion No. H- 593

Re: Whether operating authority from the Railroad Commission must be obtained for wreckers used by the owner of a garage which includes a storage area for automobiles.

Dear Colonel Speir:

You have requested our opinion concerning whether certificates of convenience and necessity from the Railroad Commission are required under article 911b, V. T. C. S., for certain activities.

Article 911b provides that "specialized motor carriers" must obtain a certificate. A "specialized motor carrier" is defined by section 1(i) in part as one who uses "specialized equipment" such as hoists, winches, etc. However, section 11/4 provides:

The term 'Specialized Motor Carrier' and 'Specialized Equipment' shall not include wrecker type vehicles used incidental to or as an adjunct to the carrying on of the primary business of buying, selling, exchanging, repairing, storing, servicing or wrecking motor vehicles.

You ask whether the following activities would be within this exception:

1. The operation of a wrecker type vehicle by the owner of a garage body shop specializing in body work which

garage has a fenced storage area for automobiles;

2. The operation of a wrecker type vehicle by the owner of a garage specializing in mechanical work which garage has a fenced storage area for automobiles; and
3. The operation of a wrecker type vehicle when the owner has no building but does have a fenced storage area for automobiles.

Whether any specific situation would involve activities "incidental to or as an adjunct to the carrying on of the primary business of" one listed in section 1 1/4 will depend on the characteristics of the individual circumstances and will necessitate a factual determination. Consequently, we are unable to rule on the three situations to which you make reference.

However, in Interstate Commerce Commission v. S. C. Wholesale-Warehouse Company, 312 F. Supp. 542 (D. Idaho 1969), the court construed a "primary business" test to require a determination of whether the transportation operations are in bona fide furtherance of the primary business or are conducted as unrelated or secondary enterprises.

In our view, there are several factors which will be involved in this determination. While this is not an exclusive listing, some of these factors are:

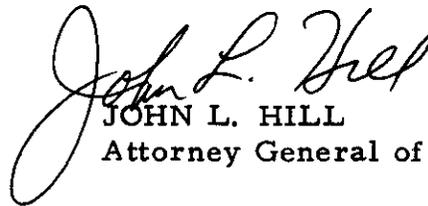
1. Whether the individual is in the business of buying, selling, exchanging, repairing, storing, servicing or wrecking motor vehicles.
2. Whether the transportation performed is in furtherance of the primary business of buying, selling, exchanging, repairing, storing, servicing or wrecking motor vehicles.
3. Whether the individual business transports or holds out to transport for anyone other than itself.

4. Whether the business advertises itself as being in a carrier business.
5. Whether its investment in transportation facilities and equipment is the principal part of its total business investment.
6. Whether revenues received from transportation services constitute a substantial portion of the total revenue of the business.

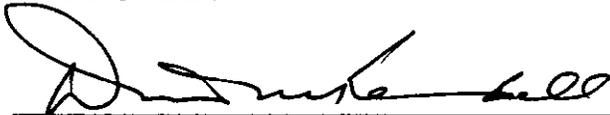
SUMMARY

Section 1 1/4 of article 911b, V. T. C. S., excepts those who operate wrecker type vehicles incidental to or as an adjunct to one of the primary businesses listed therein from the requirement of a certificate of convenience and necessity. Whether a particular situation will be within the exception must be determined on a case by case basis.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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