



OFFICE OF

RAILROAD COMMISSION
OF TEXAS

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February 20, 1992

The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Capitol Station
Austin, TX 78711

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Dear General Morales:

Opinion Committee

Your opinion is requested to the following question:

Is the transportation described by the following hypothetical within the jurisdiction of the Railroad Commission under the Motor Carrier Act, TEX. REV. CIV. STAT. ANN. art. 911b (Vernon 1964 and Supp. 1992)?

A company ships products such as plywood, lumber and other forest products from origins outside of Texas into a warehouse in Texas. No specific destination other than the warehouse is known to the shipper at the time the goods are sent to the warehouse, but some of the goods will ultimately move to customers in Texas. The company can predict, to some extent, the amount and type of product that will be ordered by its customers. Specific orders will be filled from the inventory kept at the warehouse in Texas.

The transportation at issue is the subsequent move from the Texas warehouse to a customer also located in Texas. The position of the Railroad Commission has historically been that the subsequent move is transportation wholly within Texas, and therefore subject to the regulation of the Commission. Specifically, the transportation must be performed under authority issued by the Commission and at the rates set by Commission order.

It is undisputed that such transportation would be interstate in nature if at the time of the original shipment into Texas, the ultimate destination was known. In other words, a shipment bound for a retail store in Texas could be temporarily stored at a warehouse in Texas without changing the interstate nature of the second part of the move.



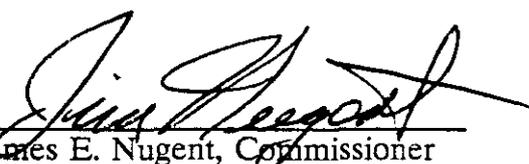
In recent years, however, there has been an attempt on the part of some shippers, interstate carriers, as well as the Interstate Commerce Commission to assert exclusive jurisdiction over these movements, without any corresponding change in the federal statutes that create the ICC and define its authority. The federal courts have been generally receptive to the ICC's arguments at the expense of state jurisdiction and control. All of the federal cases, however, have been declaratory judgements on hypothetical facts, and not a real case or controversy. The Commission, therefore, seeks guidance from your office for the direction of its enforcement efforts.

The Commission will submit more extensive briefing at a later date if it would be of assistance.

Respectfully yours,



Lena Guerrero, Chairman



James E. Nugent, Commissioner



Robert Krueger, Commissioner