



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

George W. Bush
GOVERNOR

Larry Paul Manley
EXECUTIVE DIRECTOR

BOARD MEMBERS
Margie Lee Bingham, *Chair*
Donald R. Bethel
Harvey Clemons Jr.
Florita Bell Griffin, Ph. D.
Michael E. Jones
Joseph Kemp
Walter Martinez
Paul R. Rodriguez
Mary Sanger

May 8, 1997

FILE # ML - 39552-9

I.D.# 3955

RD-941

RECEIVED

MAY 13 1997

Opinion Committee

Dan Morales, Attorney General of Texas
Office of the Attorney General
Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Federal Preemption of Article 5221f

Dear General Morales:

In August of 1994, federal legislation was passed which prohibits a State or a political subdivision of a State from enacting or enforcing a law, regulation, or other provision having the force and effect of law relating to a service of a motor carrier with respect to the transportation of property. (See 49 U.S.C. Section 14501(c)(1), enclosed.) This legislation became effective on January 1, 1996.

Under the Texas Manufactured Housing Standards Act, Article 5221f, and the Manufactured Housing Rules, a person or entity that transports a manufactured home in Texas is responsible for the proper installation of the home properly. (See Sections 3(10) and (11), and Section 7(d) and (e) of Article 5221f, and 10 TAC Section 80.121). Until passage of the federal legislation, a transporter who relocated a home between two points in Texas was required to register with the Department as an installer and complete the installation process. Gem Homes, Inc. v. Contreras, 861 S.W. 449 (1993).

Because the Texas scheme seems to relate to "a service of a motor carrier with respect to the transportation of property," the Department respectfully requests an opinion from the Attorney General as to whether the federal statute preempts those provisions of Article 5221f relating to the regulation of intrastate transportation of manufactured housing.

Sincerely,

Larry Paul Manley
Executive Director

CHAPTER 145—FEDERAL—STATE RELATIONS

Sec.

- 14501. Federal authority over intrastate transportation.
- 14502. Tax discrimination against motor carrier transportation property.
- 14503. Withholding State and local income tax by certain carriers.
- 14504. Registration of motor carriers by a State.
- 14505. State tax.

§ 14501. Federal authority over intrastate transportation

(a) **Motor carriers of passengers.**—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to scheduling of interstate or intrastate transportation (including discontinuance or reduction in the level of service) provided by motor carrier of passengers subject to jurisdiction under subchapter I of chapter 135 of this title on an interstate route or relating to the implementation of any change in the rates for such transportation or for any charter transportation except to the extent that notice, not in excess of 30 days, of changes in schedules may be required. This subsection shall not apply to intrastate commuter bus operations.

(b) Freight forwarders and brokers.—

(1) **General rule.**—Subject to paragraph (2) of this subsection, no State or political subdivision thereof and no intrastate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to intrastate rates, intrastate routes, or intrastate services of any freight forwarder or broker.

(2) **Continuation of Hawaii's authority.**—Nothing in this subsection and the amendments made by the Surface Freight Forwarder Deregulation Act of 1986 shall be construed to affect the authority of the State of Hawaii to continue to regulate a motor carrier operating within the State of Hawaii.

(c) Motor carriers of property.—

(1) **General rule.**—Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

(2) **Matters not covered.**—Paragraph (1)—

(A) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization;

(B) does not apply to the transportation of household goods; and

(C) does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.

(3) State standard transportation practices.—

(A) Continuation.—Paragraph (1) shall not affect any authority of a State, political subdivision of a State, or political authority of 2 or more States to enact or enforce a law, regulation, or other provision, with respect to the intrastate transportation of property by motor carriers, related to—

- (i) uniform cargo liability rules,
- (ii) uniform bills of lading or receipts for property being transported,
- (iii) uniform cargo credit rules,
- (iv) antitrust immunity for joint line rates or routes, classifications, mileage guides, and pooling, or
- (v) antitrust immunity for agent-van line operations (as set forth in section 13907),

if such law, regulation, or provision meets the requirements of subparagraph (B).

(B) Requirements.—A law, regulation, or provision of a State, political subdivision, or political authority meets the requirements of this subparagraph if—

- (i) the law, regulation, or provision covers the same subject matter as, and compliance with such law, regulation, or provision is no more burdensome than compliance with, a provision of this part or a regulation issued by the Secretary or the Board under this part; and
- (ii) the law, regulation, or provision only applies to a carrier upon request of such carrier.

(C) Election.—Notwithstanding any other provision of law, a carrier affiliated with a direct air carrier through common controlling ownership may elect to be subject to a

law, regulation, or provision of a State, political subdivision, or political authority under this paragraph.

(4) **Nonapplicability to Hawaii.**—This subsection shall not apply with respect to the State of Hawaii.

(Added Pub.L. 104–88, Title I, § 103, Dec. 29, 1995, 109 Stat. 899.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Surface Freight Forwarder Deregulation Act of 1986, referred to in subsec. (b)(2), is Pub.L. 99–521, Oct. 22, 1986, 100 Stat. 2993, for classification of which to the Code, see Short Title of 1986 Amendment note set out under section 10101 of this title and Tables.

Effective Date

Section effective Jan. 1, 1996, see section 2 of Pub.L. 104–88, set out as a note under section 701 of this title.

Legislative History

For legislative history and purpose of Pub.L. 104–88, see 1995 U.S. Code Cong. and Adm. News, p. —

§ 14502. Tax discrimination against motor carrier transportation property

(a) **Definitions.**—In this section, the following definitions apply:

(1) **Assessment.**—The term “assessment” means valuation for a property tax levied by a taxing district.

(2) **Assessment jurisdiction.**—The term “assessment jurisdiction” means a geographical area in a State used in determining the assessed value of property for ad valorem taxation.

(3) **Motor carrier transportation property.**—The term “motor carrier transportation property” means property, as defined by the Secretary, owned or used by a motor carrier providing transportation in interstate commerce whether or not such transportation is subject to jurisdiction under subchapter I of chapter 135.

(4) **Commercial and industrial property.**—The term “commercial and industrial property” means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use, and subject to a property tax levy.

(b) **Acts burdening interstate commerce.**—The following acts unreasonably burden and discriminate against interstate commerce and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) **Excessive valuation of property.**—Assess motor carrier transportation property at a value that has a higher ratio to the true market value of the motor carrier transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.