



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

January 11, 1939

Mr. James E. Kilday, Director  
Motor Transportation Division  
Railroad Commission of Texas  
Austin, Texas

Dear Mr. Kilday:      Opinion No. 0-32  
                                 Re: State vs. A. E. McDonald  
                                 Motor Freight Lines  
                                 Application for permit

Your letter of January 4, 1939 addressed to the Attorney General of Texas in which you request an opinion of this department together with your two letters of January 5, 1939, has been received. The pertinent portion of your letter of inquiry is as follows:

"As you know the State has been in litigation with A. E. McDonald in several courts, including the Supreme Court of the United States, which latter court held in favor of the State with respect to Mr. McDonald's asserted right to engage in motor transportation in interstate commerce without first having the authority of the Railroad Commission of Texas. I enclose a copy of the opinion of the Supreme Court of the United States. I have heard, and I advise you without stating it as a fact but as hearsay, that Mr. McDonald's case is still pending in the Supreme Court on Motion for rehearing. During the pendency of that litigation Mr. McDonald filed with this Division an application, covered by our Locket No. 2216, by which he asks for a hearing on the question of his obtaining certain authority from the Railroad Commission, which said application is shown on our docket sheet as follows:

'Application of A. E. McDonald Motor Freight Lines for a certificate authorizing operation of a common carrier motor carrier service over the following routes: No. 1 - Houston, Texas, to Texas-Oklahoma State Line near Denison, Texas, via U.S. Highway 73; No. 2 - Houston, Texas, to San Antonio, Texas, via U. S. Highway 90; No. 3 - San Antonio, Texas, to Fort Worth and Dallas, Texas, via U. S. Highway 81, San Antonio to Fort Worth, and U. S. Highways 81 and 77, San Antonio to Dallas; No. 4 - Houston to Dallas and Fort Worth, via Waco and U. S. Highways 290 and 190, Houston to Waco U. S. Highway 77, Waco to Dallas U.S. Highway 81, Waco to Fort Worth; No. 5 - Ennis to Fort Worth, via. State Highway 34; No. 6 - Fort Worth to Dallas, via State Highway 15. All routes with any and all other routes. Interstate service only. Using ten trucks.'

"In view of this situation your prompt advice is requested on the following questions:

"1. Will the granting of a hearing by the Railroad Commission on the aforesaid application in any way jeopardize the rights of the State in the litigation above mentioned?

"2. In view of the entire situation as reflected by your files in the aforesaid litigation and otherwise, is Mr. McDonald now entitled to a hearing on the aforesaid application?"

Since your letter was received by this department, the Supreme Court of the United States overruled the motion for rehearing in the McDonald case, this being the case, it

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is unnecessary to answer the first question.

In answer to the second question in your letter, it is my opinion and you are so advised that the applicant in question would be entitled to a hearing on the application now pending before your department providing the applicant has complied with provisions of Article 911b, Revised Civil Statutes of Texas.

Yours very truly

ATTORNEY GENERAL OF TEXAS  
GEORGE P. KIRKPATRICK (S)

By

Assistant

GPk:RS

APPROVED:

GERALD C. MANN (Signed)

ATTORNEY GENERAL OF TEXAS

OK-G.R.L.