



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

October 23, 1958

Hon. Jack Fields
County Attorney
Calhoun County
Port Lavaca, Texas

Opinion No. WW 515

Re: Whether Union Carbide Chemical Company Motor vehicles are required to be registered under Article 6675a-2 of the Revised Civil Statutes of Texas and Article 804 of the Penal Code when such vehicles traverse only seven-tenths of a mile over a State highway in the course of their operation.

Dear Mr. Fields:

Your request for an opinion reads, in part, as follows:

"Union Carbide Company owns and operates a chemical plant located on Highway No. 185 in Calhoun County, Texas.

"The motor vehicles in question are used solely in connection with the plant operations of Union Carbide, and are upon a public highway only when necessary to go from lands owned by the corporation on the other side of the highway. Due to the location of ingress and egress of said properties, it is necessary for said vehicles to traverse the highway for approximately seven-tenths of a mile.

"Union Carbide owns land almost in equal portions on each side of the highway and each portion of land is directly across the highway from the other.

"The question I wish an opinion on being: Is the owner, its agents or employees, subject to prosecution under Article 804 of the Penal Code in view of Article 6675a-2 R.C.S. of T. when operating

its unregistered motor vehicle under the facts as above set out."

Our answer to the above-mentioned question is no.

Art. 6675a-2 (C.V.S.) is our motor vehicle registration statute providing an exception from registration for the following:

". . . ;provided, that where a public highway separates lands under the dominion or control of the owner, the operation of such a motor vehicle by such owner, his agent or employees, across such highway shall not constitute a use of such motor vehicle upon a public highway of this State."

Art. 804 (P.C.) provides a fine for those operating an unregistered motor vehicle on a public highway.

The owners of the vehicles under the facts you described fall within the exception quoted. The land in question is separated by a public highway and nothing else, and the land on either side is "under the dominion and control" of the owner of the vehicles. In Brown v. Meady 10 Me. 391, 25 Am. Dec. 248, the Court said "across. . . should be construed to mean the right of passing in the most convenient route over the field to the grantors buildings, though in so doing it was necessary to pass over the lot transversely and lengthwise."

While the law generally construes an exception to a revenue statute strictly against the person claiming same, the cases construing Art. 6675a-2 have given it a liberal construction. In Texas Highway Department, et al. v. Kimble County, et al., 239 S. W. 2d 831, Court of Civil Appeals, Writ refused N.R.E. the Court stated, "such article is, therefore of a penal nature and must be construed most favorable to the owner of the vehicle". Again in Allred, et al. v. J. C. Engleman Inc. Court of Civil Appeals, 54 S. W. 2d 352, Affirmed by the Supreme Court in 61 S. W. 2d 75, the Court said "the statute must be liberally construed to effectuate its purposes and designs".

The statute in question being of a penal nature requires "the act which is claimed to be a violation of penal law must be fairly within its terms to sustain an action for the penalty" Thompson v. Missouri, K & T Ry. Co. of Tex., (Sup. Ct. of Tex.) 126 S.W. 257.

It is our opinion that under the facts presented, the nature of the statute and the liberal construction placed thereon by the cases, that the egress from the land on one side of the highway need not be directly across the highway from the ingress to the land on the other side.

It is to be understood that this opinion is limited solely to the fact situation presented herein and that any other use of said vehicle on a public highway would require registration.

SUMMARY

Where land under the dominion and control of the owner of a motor vehicle is separated by a public highway, said vehicle need not be registered under Art. 6675a-2 R.C.S. of Tex., where said vehicle is crossing the highway from said land on one side to said land on the other side even though the egress from the land on one side is not directly across the highway from the ingress to the land on the other side.

Yours very truly,

WILL WILSON
Attorney General

By 

John C. Phillips
Assistant

JCP:jc

APPROVED:

OPINION COMMITTEE

L. P. Lollar, Chairman
Leon Pesek
Clyde Kennelly

REVIEWED FOR THE ATTORNEY GENERAL
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