

**FORT WORTH FREIGHT BUREAU
FORT WORTH CHAMBER OF COMMERCE**

TRAFFIC AND TRANSPORTATION DEPARTMENT

PHONE 3-2825

115 EAST NINTH STREET

ED. P. BYARS,
TRAFFIC MANAGER

FORT WORTH, TEXAS
February 15, 1941

EXECUTIVE COMMITTEE
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AND
FREIGHT TRAFFIC
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Mr. Ben E. Keith,
Ben E. Keith Co.,
Fort Worth, Tex.

Dear Mr. Keith:

Referring to our telephone conversation regarding the question of whether an application will have to be filed with the Interstate Commerce Commission for a Certificate of Convenience and Necessity for the construction and operation of the track from Fort Worth to the new Bomber Plant at Lake Worth.

In this case I do not think the law requires the filing of such an application, but as a matter of precaution I think it would be well to file it, as this can be done without admitting that the law requires it and without waiving any legal rights whatever.

Section 1, paragraph 18, of the Interstate Commerce Act, provides that the Interstate Commerce Commission must first find that the present or future public convenience and necessity require the construction, or operation, or the construction and operation of an extension of a line of railroad. Paragraph 22 of Section 1 provides that this does not apply "to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one state." But the United States Supreme Court in Texas & Pacific Railway Company versus G. C. & S. F. Railway Company, 270 U. S. 266, held that the Santa Fe was required to obtain a Certificate from the Commission to build a spur track from Dallas to Eagle Ford, a distance of approximately six miles. The reason given by the Court in that case was that Eagle Ford was already served with numerous industrial tracks by the T. & P. Railroad and that the Santa Fe was attempting to build this spur in order to tap the revenues of the T. & P. Railroad which was already adequately serving the industries at Eagle Ford, and that this was contrary to the policy announced by Congress in the Transportation Act of 1920. And so the Court said that this particular extension was not an industrial or spur track within the meaning of paragraph 22, but that it was an extension of the railroad and, therefore, a Certificate would have to be first obtained from the Interstate Commerce Commission before it could be built. The Court also said at page 273 of the decision above cited that the carrier, without waiving any right, could file an application with the Commission for a Certificate and assert in the application that in

its opinion the Certificate was not required because the construction involved only an industrial track, so that the Commission could pass upon the question of whether the Certificate was necessary or not.

The Texas Statutes, while requiring a Certificate and authority from the Railroad Commission to abandon any part of its line, or any spur or industrial track, do not require any authority from the state to construct new side tracks, spurs, or any extension of its line of railroad.

We have before us a case where the Interstate Commerce Commission recently authorized the extension of the Texas Mexican Railway, a distance of approximately 19 miles, from a point near Corpus Christi to the new naval air base which was not served by any other railroad, and it was not contemplated that any other railroad would undertake to serve it. The application was filed on July 30, 1940, heard by the Commission on August 26, 1940, and granted on August 29, 1940. This shows that in a situation such as we have here, it is more a matter of form than anything else to file an application with the Commission for a Certificate and that such an application would be granted immediately, particularly since it is in furtherance of the National Defense Program.

I thought this information might be of some assistance to you and to our railroad committee in dealing with this subject.

Yours very truly,

EPB:GH

E. P. Byars

cc Mr. Amon G. Carter

