OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

May 24, 1939

Hon. Sidney Lee, County Attorney
Bowie County
Texarkana, Texas

Dear Sir:

Opinion No. O-757
Re: Does the county traffic officer have a legal right to weigh overloaded vehicles?

We are in receipt of your letter of May 4th, in which you request an opinion from this department on the following question:

"Bowie County has at present a county traffic officer, who is employed under authority of article 6699 of the Revised Civil Statutes. The county has been for some time contemplating the purchase of equipment to be used by this officer in the weighing of vehicles on state highways in Bowie County, with a view to detecting violations of the Load Limit Law. The county does not wish to purchase this weighing equipment unless the Bowie County Traffic Officer has a legal right to weight vehicles. Please advise me whether or not the county traffic officer has a legal right to weigh vehicles which he suspects are overloaded."

Section 6 of article 827a, Vernon's Annotated Penal Code, reads as follows:

"Any license and weight inspector of the State Highway department, having reason to believe that the gross weight of a loaded vehicle is unlawful, is authorized to weigh the same either by means of portable or stationary scales, and to require that such vehicle be driven to the nearest scales in the event such scales are

within two miles. The inspector may then require the driver or operator to unload immediately such portion of the load as may be necessary to decrease the gross weight of such vehicle to the maximum gross weight specified by this Act."

The courts of Texas have held that the above section conferring authority upon license and weight inspectors of the State Highway Department to require drivers and operators of motor vehicles to have their trucks and contents weighed, does not confer any such authority upon constables and other peace officers of the state, i.e., deputy sheriff, sheriff, county highway officer, deputy constables and county attorney.

HEAD v. STATE (1931) 96 SW (2d) 981;
DeSHONG MOTOR FREIGHT LINES, INC. v. HOPKINS, ET AL (1937) 99 SW (2d) 1033.

We have been unable to find additional authorities on the matter, but the two cases referred to above are ample authority for the proposition set forth therein.

We wish to call attention especially to the remarks of Judge Hawkins in the opinion on motion for rehearing in the case of Head v. State, supra, among which is the following:

"If the Legislature should deem the authority vested in the designated officers under the law quoted in our original opinion to be too restrictive and conclude that the rights conferred on said officer should be extended to peace officers generally, then the Legislature may so provide; but until the law as now written is changed, we think the more reasonable construction is that placed upon it in our original opinion, that is, that the Legislature proposed to limit the rights therein conferred upon the officers named as being especially equipped and trained to properly do the things therein authorized."

In view of the above holding, the power given county traffic officers in Article 6699, Vernon's An-

notated Civil Statutes, as amended, " to enforce the highway laws of this state regulating the use of the public highways by motor vehicles", cannot be extended to include the authority to weigh loaded vehicles when they have reason to believe that the gross weight of such vehicles is unlawful.

It is our opinion that a county traffic officer employed under article 6699, supra, does not possess a legal right to weigh trucks for purposes of ascertaining whether they were loaded in excess of 7,000 pounds in violation of Article 827a, Vernon's Annotated Penal Code.

Trusting that the above fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Dick Stout
Dick Stout
Assistant

DS:cmb

APPROVED:

ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY
CHAIRMAN