



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Homer Garrison, Jr., Director
Texas Department of Public Safety
Camp Mabry
Austin, Texas

Attention: J. B. Draper

Dear Sir:

Opinion NO. O-4878

Re: Is a motor vehicle engaged in the transportation of passengers for hire or for lease operating in the city limits of an incorporated town required to be equipped with a fire extinguisher?

We are in receipt of a letter from Chief J. B. Draper of your department of September 24, 1942, addressed to the Attorney General of Texas from which we quote in part:

"We respectfully request that your department give us an opinion as to whether or not a motor vehicle engaged in the transportation of passengers for hire or for lease operating in the city limits of an incorporated town would be required to be equipped with a fire extinguisher."

Article 827a, Section 9, Penal Code of the State of Texas, provides in part:

"Every motor vehicle engaged in the transportation of passengers for hire or lease shall be equipped with at least one quart of chemical type fire extinguisher in good condition and conveniently located for immediate use."

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While the Beaumont Court of Civil Appeals in *Schoenmann v. Otey*, 126 S. W. (2d) 681, upheld the contention that Article 827a, Section 10, Penal Code of Texas, governs the operation of vehicles on rural highways only and not within the limits of an incorporated city, Section 10 expressly limits its application to that "portion of any highway, outside of any incorporated town or city." Because of this express limitation contained in Section 10, this case cannot be construed as authority to confine the application of Section 9 to rural highways alone.

The purpose of the statutory requirement that motor vehicles carry a fire extinguisher is for the safety of the passengers of commercial vehicles and the users of the highway. The act must be construed to effectuate to the fullest extent the obvious intention of the legislature deeming such policy expedient and necessary. To confine the application of this safety requirement to vehicles operating solely upon the rural highways would dwarf the protection the legislature has afforded to commercial passengers, and to confine the application of Section 9 below the reasonable interpretation of the act as a whole.

Article 827a, Penal Code of Texas, is replete with specific exceptions that certain sections thereof apply only to rural highways. Section 3(c), for example, provides that no vehicle shall exceed a certain length "unless operated exclusively within the limits of an incorporated city or town." Underlining supplied. Likewise, limitations to the general definition that a public highway includes both city streets and rural roads were expressly inserted in Sections 5 and 7a, where reference is made only to the "public highways outside the limits of an incorporated city or town." It would be strange, indeed, if public highways included only rural highways that the legislature would specify repeatedly that certain sections of the act apply only to that portion of the public highway outside of an incorporated city. Such exceptions necessarily indicate the significant fact--that public highways generally include both rural highways as well as city

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streets. This interpretation of the term "public highways" is consonant with the accepted definition of public highway in Article 802, Penal Code of Texas (including drunken driving statute), Nichols v. State 49 S. W. (2d) 783; Article 6701, Section (g), Revised Civil Statutes of Texas of 1925, Fletcher v. Bordelon 56 S. W. (2d) 3133; Article 7065, Section (g), Revised Civil Statutes of 1925 (the motor fuel tax law); State v. the City of El Paso, 143 S. W. (2d) 366; 35 Words and Phrases 113.

You are therefore advised that Article 827a, Section 9, Penal Code of Texas, not confining its application to rural highways alone in respect to the requirement that motor vehicles transporting passengers for hire or lease shall be equipped with a chemical type fire extinguisher, applies to motor vehicles so operating on the public highway either within or without the limits of an incorporated city.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

By *Benjamin Woodall*
Benjamin Woodall
Assistant

By *Stewart W. DeVore*
Stewart W. DeVore

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APPROVED NOV 10, 1942

Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

