



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

WAGGONER CARR
ATTORNEY GENERAL

April 26, 1966

Honorable Michael Earney
County Attorney
Ector County
Odessa, Texas

Opinion No. C-665

Re: Whether a plea of nolo contendere entered in justice or corporation court, will be admissible in a later proceeding to revoke a defendant's driver's license on the ground that the defendant is a habitual violator.

Dear Mr. Earney:

In your opinion request you state:

"My question is: Will pleas of nolo contendere entered in Justice and Corporation Courts to traffic violations be admissible in a later proceeding to revoke the driver's license as a habitual violator under Article 6687b?"

In the opinion which you submitted with your request you state:

"The new Code of Criminal Procedure, Article 27.14, provides for pleas of nolo contendere in Justice and Corporation Court cases. The article reads as follows:

"A plea of "guilty" or a plea of "nolo contendere" in a misdemeanor case may be made either by the defendant or his counsel in open court...."

"The new Code sets out the effect of a plea of nolo contendere in Article 27.02, Section 6, which reads as follows:

"...6. A plea of nolo contendere. The legal effect of such plea shall be the same as that of a plea of guilty, but the plea may not

be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based;'

"The question immediately arises whether or not the above provisions would allow successive pleas of nolo contendere to defeat the revocation of a defendant's driver's license under Article 6687b, Vernon's Annotated Civil Statutes (1) upon the grounds that the driver is a habitual violator of the traffic laws. Particular attention should be given to the fact that the language of Article 6687b, Vernon's Annotated Civil Statutes, speaks in the language of convictions."

Although the Texas courts have not passed upon the exact question which you ask, there have been two Texas court decisions in cases which are very similar in nature to this problem. One case, State v. Estes, 109 S.W.2d 167 (Tex. Comm. App. 1937), dealt with the disbarment of an attorney after a plea of "nolo contendere" in the Federal court. The other case, Goldman v. State, 277 S.W.2d 217 (Tex. Civ. App. 1954, error ref., n.r.e.), dealt with the suspension of the license of a medical practitioner after he had been convicted of a felony offense in the Federal court upon a plea of "nolo contendere".

Although Rule 11 of the Federal Rules of Criminal Procedure, which provides for pleas of nolo contendere in Federal court, has no provision similar to Section 6 of Article 27.02 wherein it is provided that the plea of nolo contendere may not be used against the Defendant as an admission in any civil suit based upon or growing out of the action upon which the criminal prosecution is based, the Federal courts have long construed the plea in this manner. See Bell v. Commission of Internal Revenue, 320 F.2d 953 (8th Cir., 1963), where it was held that the only distinguishable feature between a plea of "nolo contendere" and that of "guilty" is that the plea of "nolo contendere" cannot be used against the Defendant as an admission in any civil suit for the same act.

In the Estes case the Court said at page 171 of 109 S.W.2d:

"The next contention made by the respondent is that he was not convicted within the intent and meaning of article 311. He urges in this connection that he entered a plea of nolo contendere in the federal court case in which

he was charged with the commission of a felony, and that such plea, when accepted by the prosecuting attorney, becomes an implied confession of guilt and is equivalent to a plea of guilty for the purpose of that case only and cannot be used against the defendant as an admission of guilt in any civil suit for the same act.

"If it be granted that the plea entered by the respondent does not create an estoppel and that he is at liberty to re-litigate the fact of his guilt or innocence in another case, it avails nothing in this case. The term 'conviction' referred to in the statute is not restricted to a conviction procured upon entry of a particular plea by the accused in the case in which the conviction was had. The issue raised by the relators in the second count of the petition is whether respondent had been 'convicted of a felony' as alleged. It appears from the recitations of the judgment in evidence that he was convicted. No contention is made that the offense for which he was convicted was not a felony, nor is the issue of guilt or innocence involved in this proceeding."

In the Goldman case at page 222 of 277 S.W.2d, the Court followed the Estes case and said:

"Appellant further contends that a Federal Court judgment based upon a plea of 'nolo contendere' cannot constitute a conviction upon which a suit for revocation of a medical license can be maintained. As previously stated appellant was convicted as charged in a 12-count indictment upon his plea of 'nolo contendere' and sentenced to pay a fine of \$5,000, which the record conclusively shows he paid. The punishment for conviction of a single violation of the Harrison Narcotic Act under the Federal Code is a fine of not to exceed \$2,000 or imprisonment for not more than five years or both. Appellant was convicted under an indictment containing 12 counts. His conviction was therefore a felony under both the Federal Code and the Texas law. 18 U.S.C.A.,

Sec. 1; Bowers v. State, 155 Tex. Cr. R. 401, 235 S.W.2nd 449; Article 47, Tex. Penal Code.

"Appellant's contention here made that a conviction in the Federal Court upon a plea of 'nolo contendere' cannot and does not furnish a legal basis for revocation of his medical license is wholly refuted by an opinion in a similar case handed down by the Commission of Appeals and adopted by the Supreme Court in the case of State v. Estes, 130 Tex. 425, 109 S.W. 2d 167, except that Estes was disbarred as a lawyer. The accused there contended that his plea of 'nolo contendere' to a Federal Court charge could not support a judgment of conviction such as would disbar him as a lawyer. The court there held, in effect, that a conviction is not restricted because of any kind of a particular plea of the accused. Since the judgment in evidence showed him convicted, such was sufficient as a basis for disbarment."

Article 6687b, Section 22 (b), Subsection 4, Vernon's Civil Statutes, provides in part:

"The term 'habitual violator' as used herein, shall mean any person with four or more convictions arising out of different transactions in a consecutive period of twelve (12) months, or seven (7) or more convictions arising out of different transactions within a period of twenty-four (24) months, such convictions being for moving violations of the traffic laws of the State of Texas or its political subdivisions...." (Emphasis added.)

It is the opinion of this office that, for purposes of said Article 6687b, Section 22 (b), Subsection 4, it is immaterial whether the conviction was obtained after a plea of "guilty", "not guilty", or "nolo contendere" by the Defendant.

SUMMARY

A conviction for a traffic violation upon a plea of nolo contendere may be used under Article 6687b, Section 22(b), Subsection 4, Vernon's Civil Statutes, to show that a person is an habitual violator of the traffic law of the State of Texas.

Honorable Michael Earney, page 5 (C-665)

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By: 
ROBERT E. OWEN
Assistant Attorney General

REO/er

APPROVED:

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