



**THE ATTORNEY GENERAL
OF TEXAS**

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**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

December 28, 1972

Honorable Clifford Powell
County Attorney
Grayson County Courthouse
Sherman, Texas 75090

Opinion No. M- 1288

Re: Whether a certain piece of equipment used primarily for the application of fertilizer and herbicides is required to be registered for highway usage under Art. 6675a-2, V. C. S.

Dear Mr. Powell:

You have requested our opinion as to whether primary use and design is the appropriate test to be applied in determining whether a vehicle is an "implement of husbandry" within the meaning of Article 6675a-1 (r), Vernon's Civil Statutes. The vehicle in question is the "PAMCO MUD CAT" described in some detail in materials attached to your request.

In Attorney General's Opinion M-1254 (1972), this office had occasion to review the above-cited statutory provision and we held that:

"It is fundamental then, that whether a vehicle is an 'implement of husbandry' must be determined by the primary design and primary use or purpose to which the vehicle is put and turns on the 'facts of any particular case'."

We have therefore previously answered your inquiry as to the appropriate test to be applied. Physical appearance, while providing a visual impression of the vehicle's function, can be no more than one element in the overall consideration of primary design and use.

Examination of the attached materials reveals that the "PAMCO MUD CAT" is designed solely to apply liquid and dry fertilizer. The vehicle itself is equipped with greatly oversized tires and a planetary axle system to facilitate off-the-road use. Mounted upon the vehicle is either a dry bulk fertilizer steel body container with hydraulic motor operated 20" spinners used to

distribute and apply the dry bulk fertilizer or a 1290 gallon fiberglass single or double compartment tank and associated pumps, valves and spreading applicators. In addition, the vehicle may be equipped with a wheel mounted 36' wing spreader for special dry fertilizer application. While the vehicle does have 4-wheels rather than 3 as is the case with some vehicles of similar design and purpose the additional wheel is designed to add stability to the vehicle during its off-the-road use.

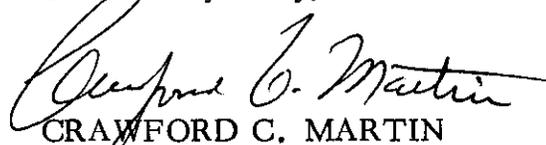
You state in your request that the "PAMCO MUD CAT" is used to apply liquid fertilizer and herbicides to farms owned by the owner of the "PAMCO MUD CAT" as well as to the farms of others. The vehicle travels empty upon the public highways when moving from one farm to another. Once on location at a particular farm, the fertilizer or herbicide is loaded from a supply trailer or semi-trailer into the "PAMCO MUD CAT" for subsequent application onto the field. During the off-season for fertilizer application the vehicle is idle.

In view of all the factors presented we are persuaded that the "PAMCO MUD CAT" is primarily designed and used as an implement of husbandry within the meaning of Article 6675a-1 (r), Vernon's Civil Statutes. While the vehicle may conceivably be put to other uses, the Supreme Court in Allred v. J. C. Engelman, Inc., 123 Tex. 205, 61 S. W. 2d 75 (1933), 91 ALR 417, recognized and overruled this factor as not being dispositive of the question so long as the vehicle was primarily designed and used for agricultural purposes.

SUMMARY

Utilizing the appropriate test of primary design and use, the "PAMCO MUD CAT" is an "implement of husbandry" within the meaning of Article 6675a-1 (r), Vernon's Civil Statutes.

Yours very truly,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by Rex H. White, Jr.
Assistant Attorney General

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APPROVED:
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