



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

January 17, 1974

The Honorable James R. Arnold
Traffic Safety Administrator
Texas Department of Community
Affairs
P. O. Box 13449
Austin, Texas 78711

Opinion No. H- 212

Re: The constitutionality of funding
the State Driver Education Program
with a surcharge on fines for moving
traffic violations.

Dear Mr. Arnold:

You have asked our opinion about the constitutionality of funding the State Driver Education Program with a surcharge on fines for moving traffic violations.

We assume "surcharge", as used in your request, refers to a charge similar to those made pursuant to Article 1083 of Vernon's Texas Code of Criminal Procedure to finance the Criminal Justice Planning Fund. Also see Art. 42.12, § 6a, T. C. C. P.

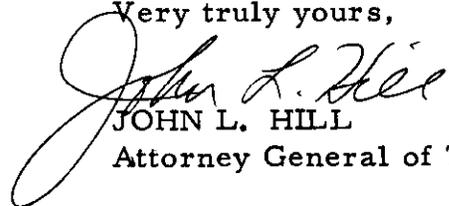
A diligent search has failed to reveal any statute in Texas which would currently authorize the collection of such a charge for such a purpose. Articles 6701j-1, The Texas Traffic Safety Act of 1967, and 4413 (29c), the Act for licensing commercial driver-training schools and instructors, do not. Its collection without statutory authority would be unauthorized. Article 1011, T. C. C. P.

Inasmuch as there is no statute purporting to permit such a charge for such a purpose, and no legislative committee is now considering a proposed enactment, we have nothing to submit to constitutional scrutiny. But see: Ex parte Carson, 159 S. W. 2d 126 (Tex. Crim. 1942); Carter v. City of Norfolk, 147 S. E. 2d 139 (Va. 1966); State v. Anderson, 234 S. W. 768 (Tenn. 1920); Ex parte Miller, 263 P 2d 522 (Okla. Crim. App. 1953); and Ex parte Coffelt, 228 P 2d 199 (Okla. Crim. App. 1951).

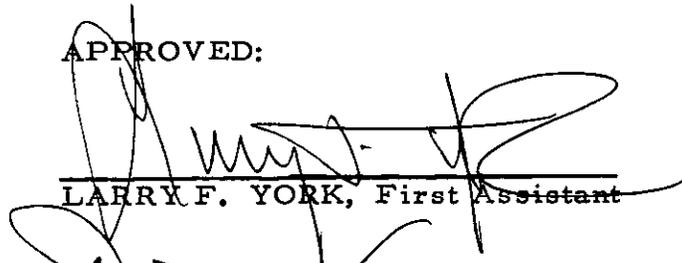
SUMMARY

In the absence of a statute or a proposed statute authorizing the collection of a surcharge on fines for moving traffic violations to be used in funding the State Driver Education Program, there is no basis for testing the constitutionality of such a levy.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee