



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 14, 1989

Honorable Patrick S. Dohoney
County Attorney
Hill County Courthouse
P. O. Box 253
Hillsboro, Texas 76645

LO-89-56

Dear Mr. Dohoney:

This is in regard to your April 18 request for an attorney general opinion (RQ-1712) in which you asked:

[w]hether the exception of section 5(b), Article 6701d-11, V.T.C.S., applies to grain that has been processed for storage, stored in a bin, and then transported to a purchaser.

Section 5(b), article 6701d-11, V.T.C.S., provides:

No person shall load, or cause to be loaded, a vehicle for operation on the public highways of this state with the intent to violate the weight limitations in Subsection (a) of this section. Intent to violate those limitations is presumed if the loaded vehicle exceeds the applicable gross vehicular weight limit by 15 percent or more. This subsection does not apply to the loading or causing to be loaded of an agricultural or a forestry commodity prior to the processing of the commodity. (Emphasis added.)

By way of elaborating the factual basis of your request, you state in your brief:

I have been informed that, once the grain has been cultivated, it is placed in a truck and taken to a bin, storage elevator or silo site, where, after being treated for preservation, it is stored. The grain is sold, removed from its receptacle, reloaded on a truck, and transported to the purchaser. It is the transportation from the storage site to the customer that is the focus of this Opinion Request.

You conclude in your brief that such loading of grain, which has already been 'treated for preservation' and stored, does not fall within the exception to the prohibition in section 5(b) and that the transportation of the grain from the storage site to the purchaser is thus subject to the weight limitations set out in V.T.C.S. article 6701d-11, section 5.

Having reviewed your request and accompanying brief and the pertinent legal authorities (e.g. Attorney General Opinion JM-354 (1985)) we are compelled to conclude that we have been given insufficient facts to make the determination you request of us. We are unable to make findings of fact in the opinions process. The statement of facts you have presented does not apprise us, for example, how the grain in question is "processed for storage" or "treated for preservation," whether such processing or treatment differs for different types of grain, etc. (We note that our attempts to secure such additional information from you by telephone have been unsuccessful).

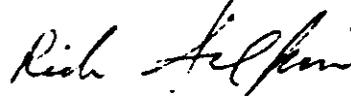
Despite the relatively narrow context in which your question is framed -- the transportation of grain from a silo to a purchaser -- a ruling from us could have far-reaching impact with respect to other phases of getting agricultural products from the farm to the purchaser: for example, the transportation of agricultural products from a storage site at which they have been collected on the farm to a central silo or other storage location.

Particularly in view of the potentially broad impact of a ruling from us on the question you present, we decline to issue a ruling in response to your request on the basis of the facts which have so far been made available to us. Should you wish to present a more detailed factual basis to your request, we might be able to re-open the file under a

Honorable Patrick S. Dohoney
July 14, 1989
Page 3

new number. Meanwhile, we are closing our file on RQ-1712. Should you have any questions in this matter, please do not hesitate to contact us.

Very truly yours,



Rick Gilpin, Chairman
Opinion Committee

RG/WW/mc

Ref.: RQ-1712
ID# 6219