



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

September 3, 1993

Honorable Stephen H. Smith
District Attorney
119th Judicial District of Texas
Tom Green County Courthouse
San Angelo, Texas 76903-5835

Letter Opinion No. 93-75

Re: Whether a person who presents forged proof of automobile liability insurance in a proceeding under article 6701h, V.T.C.S., may be prosecuted under section 37.09(a) of the Penal Code (ID# 20662)

Dear Mr. Smith:

You ask whether a person who presents forged proof of liability insurance in a proceeding under article 6701h, V.T.C.S., the Texas Motor Vehicle Safety Responsibility Act (the "act"), commits an offense punishable as a misdemeanor under section 32(b) of the act, or a felony under section 37.09(a) of the Penal Code, which provides as follows:

(a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:

(1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

An offense under section 37.09 of the Penal Code "is a felony of the third degree." Penal Code § 37.09(c). A third-degree felony is punishable by confinement in the institutional division of the Texas Department of Criminal Justice for a term of not more than 10 years or less than 2 years, or confinement in a community correctional facility for a term of not more than 1 year. *Id.* § 12.34(a). In addition to imprisonment, a fine not to exceed \$10,000 may be imposed. *Id.* § 12.34(b).

Section 1A of the act generally prohibits the operation of a motor vehicle in this state without automobile liability insurance "to insure against potential losses which may arise out of the operation of that vehicle." Section 1C provides that it is a misdemeanor offense to operate a motor vehicle in violation of section 1A. It is a defense to prosecution under the act if the person charged "produces in court an automobile liability insurance policy or certificate of self-insurance previously issued to that person that was valid at the time of the offense." V.T.C.S. art. 6701h, § 1D.

Section 32(b) of the act provides as follows:

Any person who gives information required in a report or otherwise as provided for in Section 4, knowing or having reason to believe that such information is false, or who shall forge or, without authority, sign any evidence of proof of financial responsibility, or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be fined not more than One Thousand Dollars (\$1,000) or imprisoned for not more than one year, or both. [Emphasis added.]

Under section 32(b), a person who produces in court a forged automobile insurance policy or certificate of self-insurance commits an offense with a punishment roughly equivalent to a class A misdemeanor. See Penal Code § 12.21 (a person adjudged guilty of class A misdemeanor shall be punished by a fine not to exceed \$3,000, confinement in jail not to exceed a one year term, or both). You state that "[s]tate and local officers are requesting that the Tom Green County District Attorney's Office prosecute the violators under [the felony provisions of section 37.09(a) of the Penal Code]," but that it is your position that section 32(b) of the act, the specific statute, prevails over section 37.09(a) of the Penal Code, the more general provision. We agree with your position.

Section 311.026 of the Government Code, the Code Construction Act, provides that if a general provision conflicts with a more specific provision, "the provisions shall be construed, if possible, so that effect is given to both." Gov't Code § 311.026(a). Because section 37.09(a) of the Penal Code and section 32(b) of the act provide for different penalties for the same conduct, it is impossible to construe them to give effect to both. See *Jones v. State*, 552 S.W.2d 836, 837 (Tex. Crim. App. 1977). In such a case, section 311.026 of the Government Code provides:

If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.

Gov't Code § 311.026(b); see generally *Cheney v. State*, 755 S.W.2d 123 (Tex. Crim. App. 1988); *Mills v. State*, 722 S.W.2d 411 (Tex. Crim. App. 1986); *Ex parte Harrell*, 542 S.W.2d 169 (Tex. Crim. App. 1976) (applying Government Code section 311.026 and its statutory predecessor to potentially conflicting criminal statutes). Furthermore, "[w]here the special statute is complete within itself, it controls, even though other statutes concerning the same subject matter contain requirements not enumerated in the special statute. Legislative intent must be examined." *Jones v. State*, 552 S.W.2d at 837 (quoting *Cuellar v. State*, 521 S.W.2d 277, 279 (Tex. Crim. App. 1975)).

Although the Penal Code provision was enacted after section 32(b) of the act,¹ there is absolutely no indication that the legislature intended for the Penal Code provision to prevail over section 32(b). In addition, we conclude that section 32(b) is "complete within itself" given the specific nature of the act's comprehensive scheme for regulating motor vehicle owners' financial responsibility. *See id.* It is apparent that the legislature intended section 32(b) of the act, the more specific provision, to prevail over the Penal Code provision. Therefore, we conclude that a person who produces in court a forged automobile insurance policy or certificate of self-insurance may not be prosecuted under section 37.09(a) of the Penal Code.

S U M M A R Y

A person who produces in court forged proof of automobile liability insurance in a proceeding under article 6701h, V.T.C.S., may not be prosecuted under section 37.09(a) of the Penal Code. Such a person may be prosecuted under section 32(b) of article 6701h, V.T.C.S.

Very truly yours,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

¹Section 37.09 of the Penal Code was enacted in 1973. *See* Acts 1973, 63d Leg., ch. 399, § 1, at 883. An offense under section 37.09 was a class A misdemeanor until 1991, when the legislature amended it to provide that such an offense is a felony in the third degree. *See* Acts 1991, 72d Leg., ch. 565, § 4, at 2004. Section 32(b) of the act was enacted in 1951, and has not been amended since. *See* Acts 1951, 52d Leg., ch. 498, at 1224. We note, however, that the legislature amended subsection (c) of section 32 as recently as 1987. *See* Acts 1987, 70th Leg., ch. 922, § 2, at 3112.