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SG

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RD-41

February 28, 1991

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RECEIVED

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Ms. Susan Garrison, Acting Chairman
Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

RE: Request for Opinion Concerning Construction **Opinion Committee**
2060's Amendments to Article 6701d-11, V.A.T.S.

Dear Ms. Garrison:

There is a disagreement among several trucking companies and the Constables of several counties concerning the enforcement of weight limits on trucks operating on load zoned county roads. The disagreement centers upon those trucks (and those companies) which are operating under the aegis of "Texas 2060 Permits" issued by the Texas Department of Highways and Public Transportation.

In an effort to clarify this issue, I am requesting your opinion on the following:

Question: Does a permit issued under Article 6701d-11, Section 5B, authorize a vehicle to operate at 5% over the maximum gross weight for which the vehicle can be registered, or is the vehicle limited to 5% over the posted load limit of the road over which it is travelling?

SHORT DISCUSSION

At the heart of this issue is whether or not counties may require trucking companies to obtain special permits to travel over county roads and bridges at weights exceeding the posted limits, or whether a "Texas 2060 Permit" preempts any other local permit requirements.

Section 5B of Art. 6701d-11 (the Act), added to the Act in 1989 by House Bill 2060, allows for the state Department of Highways and Public Transportation to issue permits for vehicles to "operate with a gross weight or axle weight that exceeds the allowable gross or axle weight for the vehicle." Art. 6701d-11 Sect. 5B(a). House Bill 2060 also amended the Act in several places, by adding the phrase "for that vehicle" to passages dealing with weight limitations affected by the Act. See, e.g., Art. 6701d-11, Section 6, Subd. 1.

Further, Section 2(b)(1) of the Act appears to prohibit commissioners' courts from issuing permits, charging fees for, or otherwise regulating the operation of vehicles which have a permit issued under Section 5B of the Act.

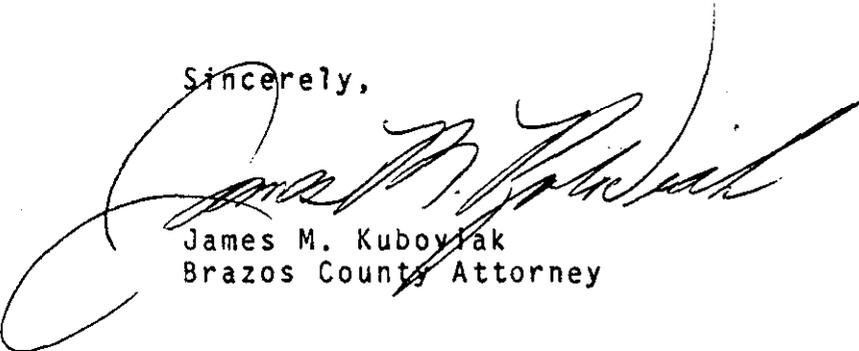
From the foregoing, it would seem that the Legislature intended to establish a statewide permitting procedure allowing certain vehicles to avoid the necessity of obtaining local, county-by-county permits when operating over load zoned county roads. The House Bill 2060 amendments say nothing, however, about operating in excess of weight limits "for that vehicle" when crossing load zoned bridges within a particular county. In fact, the "Texas 2060 Permit" itself -- at least the example provided to my office by counsel for one trucking company -- shows on its face that the vehicle "[m]ay not operate on load zoned bridges more than 5% over posted load limit." (Emphasis added.)

It would be somewhat incongruous (though not altogether unheard of) for the Legislature to provide for vehicles meeting one weight standard to operate over load zoned roads while prohibiting those same vehicles from crossing load zoned bridges -- which in many instances are an integral part of those same roads -- unless they conform to a different, and much lower, weight standard.

The resolution of this question will provide the necessary guidance for our Constables and other license and weight enforcement personnel as to how "Texas 2060 Permits" are to be handled. It will also solve what is a growing problem in Justice Courts in Brazos and other counties: the increasing number of "overweight" citations being contested by trucking companies operating under a permit.

Your prompt reply to this Request for Opinion will be greatly appreciated.

Sincerely,



James M. Kuboyak
Brazos County Attorney

JMK/jrd

xc: file