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Opinion Committee

January 3, 1996

Honorable Dan Morales
Attorney General
Price Daniel, Sr. Building
Austin, Texas

FILE # ML-38009-96I.D. # 38009

Re: Request for Attorney General opinion on Senate Bill 964

Dear General Morales:

The Department of Public Safety requests an opinion from your office regarding several aspects of Senate Bill 964, which was passed by the 74th Legislature. The bill concerns driver education and the manner in which it is taught.

The following are the questions that the Department believes must be answered before proceeding with implementation of the bill.

1. Must a parent or legal guardian who teaches a driver education course approved by the Department of Public Safety under Sec. 7A, Art. 6687b, V.T.C.S., be licensed as a commercial driver training school and otherwise meet the requirements of Sec. 10, Art. 4413(29c), V.T.C.S.?
2. Must a parent or legal guardian who teaches such a driver education course be involved in "home school" instruction of the person to be taught?
3. Is it permissible for the Texas Education Agency to provide to the Department of Public Safety the certificates of course completion for those persons who have successfully completed courses approved by DPS under Sec. 7A, Art. 6687b, V.T.C.S.?

4. May the Department of Public Safety by rule set out the minimum course curriculum elements required for approval of a course of driver education by a parent or legal guardian under Sec. 7A, Art. 6687b, V.T.C.S.?

The 74th Legislature, Regular Session, 1995, passed Senate Bill 964, with an effective date of September 1, 1995. That bill made several amendments to statutes relating to driver education and driver licensing.

Question 1. The Department seeks an opinion as to whether a parent or legal guardian, who teaches a course approved by the Department of Public Safety under Sec. 7A, Art. 6687b, V.T.C.S., must be licensed under Art. 4413(29c), V.T.C.S. In Senate Bill 964, SECTION 30 added a new provision, Sec. 7A, Art. 6687b, which provides as follows:

"Sec. 7A. DEPARTMENT-APPROVED COURSES. (a) The Department by rule shall provide for approval of a driver training course given by the parent or legal guardian of a person who is required to complete successfully a driver training course to obtain a Class C license. The rules must provide that:

- (1) the parent or guardian be a licensed driver;
- (2) the student driver spend a minimum number of hours in:
 - (A) classroom instruction; and
 - (B) behind-the-wheel instruction;
- (3) the parent or guardian not be convicted of:
 - (A) criminally negligent homicide; or
 - (B) driving while intoxicated; and
- (4) the parent or guardian not be disabled because of mental illness.

(b) The Department may not approve a course unless it determines that the course materials are at least equal to those required in a course approved by the Central Education Agency, except that the Department may not require that:

- (1) the classroom instruction be provided in a room having particular characteristics of equipment; or
- (2) the vehicle used for the behind-the-wheel instruction have equipment other than the equipment otherwise required by law for operation of the vehicle on a highway while the vehicle is not being used for driver training.

(c) The rules must provide a method by which:

- (1) approval of a course is obtained; and
- (2) an applicant submits proof of completion of the course.

(d) Completion of a driver training course approved under this section has the same effect under this Act as completion of a driver training course approved by the Central Education Agency."

The Department of Public Safety believes that the legislature, in adopting the language in Sec. 7A, Art. 6687b, above, authorized any parent or guardian who meets the criteria set out therein and in

rules adopted by the Department pursuant to that section to instruct that person's child or ward in driver education.

Sec. 7A is a clear and unambiguous statement of authority for parents and legal guardians. It is notable that Subsection (d) of Sec. 7A provides that "completion of a driver training course approved under this section has the same effect under this Act as completion of a driver training course approved by the Central Education Agency." That effect is noted in SECTION 25 of S.B. 964, which amended Sec. 7, Art. 6687b. Specifically, the requirements for driver licensing of a person under 18 years of age now allow for completion of a course approved either by the Department under Sec. 7A or approved by the Central Education Agency.

While there are requirements for licensing of "driver education schools" under Art. 4413(29c), V.T.C.S. (the Texas Driver and Traffic Safety Education Act), that statute does not apply to courses administered by parents or legal guardians under Sec. 7A, Art. 6687b. Sec. 9, Art. 4413(29c), prohibits a person from operating a school that provides a driver education course without a driver education school license issued by the commissioner. A school is defined in that article as a driver education school or driving safety school. Only the term "driver education school" is relevant for this inquiry. The definition added by S.B. 964, in Sec. 3, Art. 4413(29c) is:

"(18) "Driver education school" means an enterprise that maintains a place of business or solicits business in this state, that is operated by an individual, association, partnership, or corporation for the education and training of persons at a primary or branch location in driver education or driver education instructor development, and that is not specifically exempted by this Act."

The term "enterprise," used in the definition of "driver education school," connotes a business organization and does not apply to a course taught only by a person's parent or legal guardian. Further, the definition requires that the school maintain a "place of business" or "solicits business," neither of which are applicable to a course taught only by a parent or guardian. That definition further limits its applicability to commercial enterprises by referring to "primary or branch locations," a concept that is inconsistent with a course taught by a parent or guardian. Additionally, the exemptions referred to in the definition are not relevant because the definition of "driver education school" does not apply to the Department approved course under Sec. 7A, Art. 6687b.

Had the legislature intended for there to be additional requirements placed on parents or guardians teaching a course under Sec. 7A, Art. 6687b, that section would have referenced any such requirements. The Department submits that the only requirements set out by statute relating to the driver training course to be given by a parent or legal guardian under Sec. 7A, Art. 6687b, are the requirements listed in that section.

Question 2. The second question that is submitted for an opinion is whether a parent or legal guardian who teaches a driver training course, as authorized by Sec. 7A, Art. 6687b, must be a parent who is also providing "home school" instruction of the person to be taught. This question arises

because there was reportedly some expression of intent by a member of the legislature during debate on Senate Bill 964 that only home school teachers would be allowed to teach the course approved by the Department of Public Safety under Sec. 7A.

It is submitted that Sec. 7A authorizes driver training instruction of an approved course by any parent or legal guardian who meets the criteria set out in that section. Those requirements are that the parent or guardian must be a licensed driver, must not be convicted of criminally negligent homicide or driving while intoxicated, and must not be disabled because of mental illness. The clear language of the statute provides an unambiguous statement of legislative intent that any parent otherwise meeting the above requirements, along with those imposed by rule of the Department of Public Safety, may teach a course approved under Sec. 7A.

This conclusion is further evidenced by other provisions in Sec. 7A. In Subsection (a)(2), Sec. 7A, there is a requirement that the course contain a minimum number of hours in classroom instruction and behind-the-wheel instruction. The provisions of Sec. 7A(b)(2) state that the Department may not require that classroom instruction be provided in a room having particular characteristics or equipment or that a vehicle used for behind-the-wheel instruction have any special equipment other than that which is otherwise required by law for operation on a highway. These provisions appear to be further evidence that any parent or legal guardian who meets the specified requirements be allowed to teach driver training to that person's child or ward.

While there may be some arguments that public safety would be better served by limiting the providers of driver training under Sec. 7A to home school situations, the legislature has not done so in the enactment of Senate Bill 964. Further, expressions of legislative intent outside of the statute itself are not usually considered where there is no ambiguity in the statute.

Question 3. The third question is whether it is permissible for the Texas Education Agency (TEA) to provide to the Department of Public Safety the certificates of course completion for those persons who have successfully completed courses under Sec. 7A, Art. 6687b, V.T.C.S.

In Sec. 9A, Article 4413 (29c), V.T.C.S., it is provided that TEA shall print and supply to licensed and exempt driver education schools serially-numbered driver education certificates to be used for certifying completion of an approved driver education course for the purposes of Sec. 7(a), Art. 6687b, which relate to the requirements in applying for a driver's license. While a driver training course approved under Sec. 7A, Art. 6687b, is not a licensed or exempt school under Art. 4413(29c), the driver education certificates issued by TEA should be made available under DPS rules for persons completing the course. In Sec. 7(a), Art. 6687b, which was amended by Senate Bill 964, it is provided that a person who completes a course taught under Sec. 7A by a parent or guardian may submit a driver education certificate provided for by Sec. 9A, Art. 4413(29c), indicating that the person has completed that course. Further, in Sec. 7A(d), Art. 6687b, it is provided that completion of a driver training course approved by DPS under Sec. 7A has the same effect under Art. 6687b as completion of a driver training course approved by TEA. Any limitation on issuance

of driver education certificates set out in Art. 4413(29c) is overcome by the provisions of Sections 7(a) and 7A, Art. 6687b.

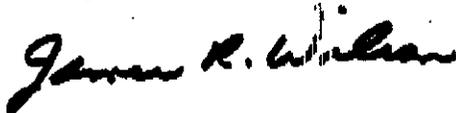
The only reference to "home schools" contained in Senate Bill 964 appears in that Act's amendment of Sec. 12(c), Art. 6687b. There, the reference to "home" schools merely sets out the requirement that instruction permits may only be issued to persons between the ages of 15 and 18, who are high school graduates, or who are currently attending public or home schools. This provision does not provide that only home school students are entitled to take the course authorized by Sec. 7A, Art. 6687b. Had the legislature intended such a limitation, it would have clearly stated it.

Question 4. The fourth question is whether DPS may, by rule, set out the minimum course curriculum elements required for approval of a course of driver education by a parent or legal guardian under Sec. 7A, Art. 6687b. In Sec. 7A(b), it is provided that DPS may not approve a course unless it determines that the course materials are at least equal to those required in a course approved by TEA.

The Department of Public Safety submits that it must necessarily have the authority to establish rules in which the elements of an approved course are contained. Otherwise, the approval or disapproval of a course that a parent or legal guardian proposed to teach would be based on criteria that were unavailable to that individual. Due process would appear to require that the criteria be set out explicitly so that applicants would have fair notice of what was required for approval.

The Department of Public Safety is mindful of the significant safety implications of the driver training programs provided for young drivers. It also recognizes that the standards for such training originate in the relevant statutes, and it must abide by them. The Department seeks the opinion of the Attorney General on these matters and will provide any additional information that is needed.

Sincerely,



James R. Wilson
Director