



TEXAS DEPARTMENT OF PUBLIC SAFETY

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March 25, 1998

FILE # ML-40180-98
I.D. # 40180

Honorable Dan Morales
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RD-1117

RECEIVED
MAR 31 1998
Opinion Committee

Attention: Ms. Sarah J. Shirley, Chair
Opinion Committee

Dear General Morales:

As Director of the Department of Public Safety, I hereby request your opinion as to the effect of certain recent legislation (Senate Bill 370) enacted by the 75th Legislature.

Transportation Code § 642.002 requires certain commercial motor vehicles, truck tractors, and road tractors to have identifying markings on each side of the power unit to identify the owner or operator of the vehicle. An operator of such vehicle commits an offense (Class C misdemeanor) if he operates the vehicle without the required markings.

Section 4.12 of S.B. 370, (the sunset bill of the Texas Department of Transportation), has expanded the signage requirement of § 642.002 to apply to tow trucks. Second, in addition to showing the name of the owner or operator of the vehicle, Section 4.12 expands the identification provision to also require the address, including the city and state, of the owner or operator of the vehicle. Finally, Section 4.12 creates a new offense (Class C misdemeanor) if the owner or operator permits another to operate the vehicle without the required signage. (See 75th Session, 1997 Tex.Sess.Law Serv., ch. 1171.)

The joint sponsors of the bill have expressed concern that the Section 4.12 amendment affecting signage on trucks was inadvertent, overbroad, and in conflict with legislative intent. (See letter of Honorable Ken Armbrister, Chairman, Senate State Affairs, to Colonel Dudley Thomas, 2/17/98; and letter of Honorable Clyde Alexander, Chairman, House Committee on Transportation, to Colonel Dudley Thomas and to C. Wes Heald, Executive Director, Texas Department of Transportation, 2/12/98.) According to the bill sponsors, the address requirement was meant to apply to tow trucks only, and not to other commercial motor

vehicles identified in § 642.002.

There is legislative history to support the sponsors' view that the amendment in question was offered with the intention and understanding that tow trucks should be required to bear identification markings indicating the owner's address. An amendment affecting tow trucks was inserted into S.B. 370 by concurrent resolutions of the House (H.R. 1300) and Senate (S.R. 982). The concurrent resolutions provided an explanation of the amendment, which was that the amendment was "necessary to protect consumers and other members of the public by requiring that tow trucks be clearly marked so as to identify the owner or operator of the tow truck." Additionally, a Conference Committee Report was generated which stated that Section 4.12 was intended to require an "owner or operator of a tow truck to display the name and address of the owner/operator and the registration number to ensure consumer protection."

Although Section 4.12 was apparently intended to reach only tow truck owners and operators, the literal meaning of the amendment reaches more broadly and affects other classes of commercial motor vehicles identified in Transportation Code § 642.002(1). Compliance with this amendment would impose significant expense on the affected classes of vehicles.

It has been suggested that the Department of Public Safety and the Department of Transportation should implement and enforce Transportation Code §642.002 with true legislative intent in mind.

My questions are:

(1) Does the apparent conflict between the legislative intent and the express language of S.B. 370, Section 4.12, rise to the level of "mistake" so as to invalidate the address requirement of S.B. 370 as applied to certain vehicles other than tow trucks?

(2) If not, is it permissible for the Department of Public Safety to adopt a modified enforcement policy designed to administratively correct the legislative error, such that the relevant signage provisions of S.B. 370 requiring an address would be enforced only against one class of vehicles (tow trucks) originally intended to be reached by this legislation? Would such a limited enforcement policy constitute (a) an invalid attempt to suspend a law or portion of law; or (b) an invalid method of selective enforcement?

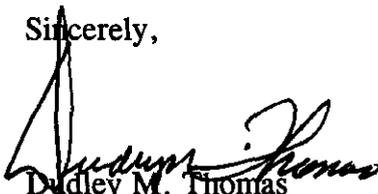
It is the Department's understanding that in general, a statute which is clear on its face may not be altered by judicial construction or suspended except by subsequent legislation. Moreover, "No power of suspending laws in this State shall be exercised except by the Legislature." Texas Const. Art. 1, § 28. Occasionally, however, courts may allow for clerical error. Association of Texas Professional Educators v. Kirby, 788 S.W.2d 827 (Tex. 1990). However, the error involved in Kirby involved a single change in the effective date of a section of a bill. (After a conference committee report was signed, but before the bill was enrolled, someone crossed out the number "5" by hand in section 23 of the bill and wrote the

number "7" above the crossed-out number.) The error brought to light in S.B. 370 appears to be more fundamental.

The Department is frankly wary of implementing a partial or selective enforcement strategy. Under ordinary circumstances, selective enforcement would be affirmatively avoided as a law enforcement strategy. However, in reviewing a claim of selective or discriminatory enforcement, the Texas Supreme Court has held that, "It is not sufficient, however, to show that the law has been enforced against some and not others. The defendant must also show that the government has purposefully discriminated on the basis of such impermissible considerations as race, religion, or the desire to prevent the exercise of constitutional rights." State v. Malone Service Co., 829 S.W.2d 763 (Tex. 1992), cert. denied 113 S.Ct. 464 (1992). Devising an enforcement strategy to more closely comport with legislative intent does not necessarily appear to be an "impermissible consideration" per se, but it could engender an equal protection challenge.

We appreciate your attention and guidance with these matters. If I can provide any assistance to you regarding this request, please do not hesitate to call. You may also contact Kevin Raymond of our Legal Services at (512) 424-2890.

Sincerely,



Dudley M. Thomas
Director

Enclosures

cc: Hon. Ken Armbrister
Hon. Clyde Alexander
C. Wes Heald, Executive Director, Texas Department of Transportation

DMT:KMR