



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 4, 2024

Ms. Jacky Cockerham
Aransas County Auditor
2840 Highway 35 North
Rockport, Texas 78382

Opinion No. KP-0458

Re: Authority of a deputy sheriff under Transportation Code section 621.402 to operate a fixed motor vehicle weigh station for all commercial vehicles (RQ-0005-AC)

Dear Ms. Cockerham:

You ask whether “a deputy sheriff certified under Transportation Code [sections] 621.401 and 621.402 [may] operate a fixed commercial motor vehicle weigh station directing all commercial vehicles to enter the facility to have their weight inspected for violations.”¹

General Authority to Inspect Commercial Vehicles

As an initial matter, we note that the Transportation Code grants the State broad powers regarding the inspection of commercial trucks on Texas highways. Relevant here, chapter 621 of the Transportation Code regulates the weight and size of all vehicles, including commercial trucks, using Texas highways. *See generally* TEX. TRANSP. CODE §§ 621.001–.511 (“General Provisions Relating to Vehicle Size and Weight”). Under that chapter, subsection 621.101(a) establishes a statutory maximum weight for operating a vehicle on a public highway, depending in large part on the number of axles on the vehicle. *Id.* § 621.101(a); *see also id.* § 621.001(9) (providing that the term “[v]ehicle” for purposes of chapter 621 “includes a motor vehicle, commercial motor vehicle, truck-tractor, trailer, or semitrailer”). To enforce these weight limitations, section 621.402 authorizes a “weight enforcement officer who has reason to believe” the weight of a loaded motor vehicle is unlawful to “weigh the vehicle using portable or stationary scales furnished or approved by the Department of Public Safety” (the “Department”).² *Id.* § 621.402. A “weight enforcement officer” is primarily a Department license and weight inspector, a highway patrol officer, or a sheriff or sheriff’s deputy. *Id.* § 621.401(1)–(3).

¹Letter from Ms. Jacky Cockerham, Aransas Cnty. Auditor, to Off. of the Att’y Gen., Op. Comm. at 1 (Aug. 18, 2023), <https://texasattorneygeneral.gov/sites/default/files/request-files/request/2023/RQ0005AC.pdf> (“Request Letter”).

²The weight enforcement officer may also require the vehicle to be weighed by a public weigher or be driven to the nearest available scales, and “may prohibit the further operation of the vehicle on the highway” if a safety rule or regulation is in violation. TEX. TRANSP. CODE § 621.402(a)(2), (b), (c).

In addition, chapter 644 of the Transportation regulates safety standards for commercial vehicles. *See generally id.* §§ 644.001–.252 (“Commercial Motor Vehicle Safety Standards”). Subsection 644.103(a) of that chapter authorizes an officer of the Department to stop, enter, or detain a vehicle subject to commercial vehicle safety standards on a highway “to determine whether the vehicle is in violation of federal or safety regulations.”³ *Id.* § 644.103(a); *State v. \$217,590 in U.S. Currency*, 18 S.W.3d 631, 632 n.2 (Tex. 2000); *see also* TEX. TRANSP. CODE § 644.051(a)(2) (directing the Department’s public safety director to “adopt rules regulating . . . the safe operation of commercial motor vehicles”); 37 TEX. ADMIN. CODE § 4.11(a)(1) (2023) (Tex. Dep’t of Pub. Safety, General Applicability and Definitions) (incorporating enumerated federal motor carrier safety regulations to “ensure . . . a commercial motor vehicle is safely maintained, equipped, loaded, and operated”).

Transportation Code subsection 621.402(a) likely does not authorize a deputy sheriff to operate a fixed commercial vehicle weigh station as proposed because it requires a weight enforcement officer to have reason to believe a loaded vehicle’s weight is unlawful.

With this background in mind, we return to your inquiry. You direct our attention to several court cases that have addressed the constitutionality of traffic stops under the Fourth Amendment in various contexts, suggesting that your primary concern is whether the operation of a weigh station as described poses any constitutional concerns under that provision. Request Letter at 1–2. You ask for guidance to assist the county “in the formulation of appropriate law enforcement and administrative policy.” *Id.* at 2. Before addressing the Fourth Amendment, we first examine the statutory authority to make the stop in the scenario you pose. *See United States v. Fort*, 248 F.3d 475, 478 (5th Cir. 2001) (stating that a “threshold question” in a case challenging the warrantless detention of a commercial truck on a highway under the Fourth Amendment was “whether the statute provided a basis” for the stop).

As previously noted, a “weight enforcement officer” expressly includes a deputy sheriff.⁴ TEX. TRANSP. CODE § 621.401(3). Thus, a deputy sheriff is authorized to weigh a loaded vehicle pursuant to subsection 621.402(a), including a commercial vehicle, if the officer has “reason to believe” its weight is unlawful. *Id.* § 621.402(a); *see Hancock v. State*, 238 S.W.2d 961, 962–63 (Tex. Crim. App. 1951) (concluding under a predecessor statute that an “inspector, seeing that [a]

³Subsection 644.103(a) also authorizes the Department to stop, enter, or detain commercial vehicles at a port of entry to determine compliance with federal or safety regulations. TEX. TRANSP. CODE § 644.103(a); *see also id.* §§ 644.001(7) (defining “[p]ort of entry” by reference to Transportation Code section 621.001), 621.001(12) (defining “[p]ort of entry” to expressly include “a publicly owned or privately owned international port of entry between this state and the United Mexican States”). Thus, nothing in this opinion affects the authority of the Department to perform safety inspections at the Texas-Mexico border pursuant to subsection 644.103(a).

⁴Your letter implies that a deputy sheriff requires certification pursuant to Transportation Code 621.401 to weigh a vehicle under section 621.402. *See* Request Letter at 1 (inquiring about the authority of “a deputy sheriff certified under Transportation Code 621.401 and 621.402”). However, a deputy sheriff is expressly named a weight enforcement officer by subsection 621.401(3) with no further certification or designation required, unlike some other officers named in the statute. TEX. TRANSP. CODE § 621.401(3); *see also, e.g., id.* § 621.401(5) (stating that a “weight enforcement officer” means “a police officer certified under Section 644.101”), 621.401(6) (stating that a “weight enforcement officer” means “a constable or deputy constable designated under Section 621.4015”).

truck was loaded, had the right and authority to stop the truck for weight inspection”); Tex. Att’y Gen. Op. No. O-253 (1939) at 2 (concluding that a “mere belief” under the same predecessor statute that a truck is overloaded “must be supported by reasonable grounds”). As you describe the proposed scenario, however, “all commercial vehicles” would be directed off the highway to the weigh station to have their weight inspected. Request Letter at 1. You do not relay that there would be prior observation of load status or any reason to believe the weight of the vehicles is unlawful. *See id.* Because subsection 621.402(a) requires a weight enforcement officer to have reason to believe the weight of a loaded vehicle is unlawful, a court would likely conclude that section 621.402 does not authorize a deputy sheriff to stop and weigh the trucks in the scenario as proposed.⁵

To the extent Transportation Code subsection 644.103(a) may allow the stopping and weighing of a commercial vehicle without suspicion that the vehicle’s weight is unlawful, a deputy sheriff from Aransas County is not among those eligible for certification under subsection 644.101(c) to do so.

On the other hand, the text of Transportation Code subsection 644.103(a) contains no language on its face requiring a degree of suspicion to stop, enter, or detain a commercial vehicle to check for safety violations on a highway. TEX. TRANSP. CODE § 644.103(a) (authorizing a Department officer to “stop, enter, or detain” a commercial vehicle on a highway). With respect to stopping and *weighing* a commercial vehicle, a Department rule provides that it “will stop, weigh, and cause the excess loads to be reduced . . . in compliance with the provisions of the statutes.” 37 TEX. ADMIN. CODE § 4.51(a) (2004) (Tex. Dep’t of Pub. Safety, Stopping, Weighing and Reducing Excess Cargo of Loaded Motor Vehicles). The rule does not specify to which statutes it refers, nor does it indicate whether the stopping and weighing of a commercial vehicle incorporates the reasonable suspicion requirement of subsection 621.402(a). *Id.* In any event, subsection 644.103(a) authorizes only an officer of the Department to stop, enter, or detain a commercial vehicle on a highway. TEX. TRANSP. CODE § 644.103(a).

As an alternative to a Department officer, subsection 644.103(b) authorizes other officers to detain commercial vehicles, including a “sheriff or deputy sheriff who is certified under Section 644.101 [to] stop, enter, or detain on a highway . . . within the territory of the county a motor vehicle that is subject to [chapter 644].” *Id.* § 644.103(b). To be eligible, however, a deputy sheriff must be from a county meeting the population and location requirements of subsection 644.101(c). Subsection 644.101(c) describes the counties from which a deputy sheriff is eligible to apply for the required certification:

- (1) a county bordering the United Mexican States;

⁵Because the scenario you describe concerns a highway, we do not consider the authority of a deputy sheriff pursuant to Transportation Code subsection 251.153(b), which permits a commissioners court to “authorize a . . . deputy sheriff . . . to weigh a vehicle to ascertain whether the vehicle’s load exceeds the limit prescribed by the commissioners court” for county roads or bridges under subsection 251.153(a). TEX. TRANSP. CODE § 251.153(b); *see also id.* §§ 251.153(a) (authorizing a commissioners court to “establish load limits for any county road or bridge in the manner prescribed by Section 621.301”), 621.301(a) (“The commissioners court of a county may establish load limits for any county road or bridge . . . with the concurrence of the Texas Department of Transportation.”).

- (2) a county with a population of less than 1,000, part of which is located within 75 miles of an international border;
- (3) a county with a population of 700,000 or more;
- (4) a county with a population of 400,000 or more that borders the county in which the State Capitol is located;
- (5) a county with a population of less than 250,000 that:
 - (A) is adjacent to two counties that each have a population of more than 1.2 million; and
 - (B) contains two highways that are part of the national system of interstate and defense highways;
- (6) a county:
 - (A) any part of which is within 30 miles of New Mexico; and
 - (B) that is adjacent to two or more counties that generated \$100 million or more in tax revenue collected under Chapters 201 and 202, Tax Code, from oil and gas production during the preceding state fiscal year;
- (7) a county with a population of more than 40,000 and less than 300,000 that is adjacent to a county described by Subdivision (4); or
- (8) a county with a population of more than 50,000 and less than 90,000 that is adjacent to a county with a population of more than 4,000,000.

Id. § 644.101(c). The population of Aransas County from the most recent federal decennial census is 23,830.⁶ Additionally, Aransas County is on the Gulf Coast northeast of Corpus Christi, bounded on the north and northwest by Refugio County (pop. 6,741), on the south by San Patricio County (pop. 68,755) and Nueces County (pop. 353,178), and on the east by the Gulf of Mexico.⁷ As such, Aransas County does not appear to satisfy any of the county descriptions delineated in subsection 644.101(c), subparts (1) through (8). Thus, to the extent Transportation Code subsection 644.103(a) may allow the stopping and weighing of a commercial vehicle without suspicion that the vehicle’s weight is unlawful, a deputy sheriff from Aransas County is not eligible

⁶See U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/aransascountytexas> (last visited Nov. 16, 2023); see also TEX. GOV’T CODE § 311.005(3) (defining “[p]opulation” for purposes of construing statutes as “the population shown by the most recent federal decennial census”).

⁷See *Aransas County*, TEX. ALMANAC, <https://www.texasalmanac.com/places/aransas-county> (last visited Nov. 15, 2023); see also U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/refugiocountytexas> (last visited Nov. 16, 2023); <https://www.census.gov/quickfacts/sanpatriciocountytexas> (last visited Nov. 16, 2023).

for certification under subsection 644.101(c) to stop or detain commercial vehicles on a highway pursuant to Transportation Code subsection 644.103(b).

Cases suggest that warrantless and suspicionless stops for the purpose of weighing vehicles could be permissible under the Fourth Amendment as a general matter.

Because we find no statutory authority to support a fixed commercial vehicle weigh station operated as you describe, we do not determine the Fourth Amendment implications of the particular scenario you put forth. But as a general matter, both the U.S. Supreme Court and the Fifth Circuit Court of Appeals have suggested that warrantless and suspicionless stops⁸ for the purpose of weighing vehicles could be constitutionally permissible.⁹ *See Delaware v. Prouse*, 440 U.S. 648, 663 n.26 (1979) (stating that its holding that driver’s license and auto registration checkpoints are unreasonable under the Fourth Amendment does not “cast doubt on the permissibility of roadside truck weigh-stations and inspection checkpoints”); *Castelo*, 415 F.3d at 411 (concluding that a Mississippi statute permitting random roadside inspections and weighing of commercial vehicles met the *Burger* factors and was thus constitutional under the Fourth Amendment); *see also United States v. Shaefer*, 637 F.2d 200, 204 (3d Cir. 1980) (noting that “a general roadblock in which all trucks were being weighed . . . arguably could satisfy the Fourth Amendment”). In these instances, the underlying statutory provisions authorized the weighing of a vehicle without a prior suspicion that the weight was unlawful. *See* DEL. CODE ANN. tit. 21, § 4506(a) (2014) (“Any police officer, having reason to believe that the weight of a vehicle and load is unlawful, *or during the course of a routine check of all applicable vehicles, may weigh said vehicle . . .*” (emphasis added)); MISS. CODE ANN. § 63-5-49(1) (2020) (providing that an authorized officer “may require the driver of any vehicle that is required by law or by any rule or regulation . . . to stop at inspection stations and submit to an inspection *to stop and submit to a weighing of the vehicle*” (emphasis added)); 75 PA. CONS. STAT. § 4981(a) (2011) (“A police officer or qualified department employee is authorized to require the driver of a vehicle or combination to stop and submit the vehicle or combination *to be measured and weighed.*” (emphasis added)).

⁸The Fourth Amendment to the U.S. Constitution protects against unreasonable searches and seizures. U.S. CONST. amend. IV. As the U.S. Supreme Court has stated, “[i]t is well-established that a vehicle stop at a highway checkpoint effectuates a seizure within the meaning of the Fourth Amendment.” *City of Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000). While a seizure is ordinarily unreasonable “in the absence of an individualized suspicion of wrongdoing,” that rule has “limited exceptions” applicable to certain contexts. *Id.* at 32, 37; *see also State v. Luxon*, 230 S.W.3d 440, 443–44 (Tex. App.—Eastland 2007, no pet.) (explaining that because a roadblock seizure is conducted in the absence of a warrant and without probable cause or reasonable suspicion, it is considered a “suspicionless seizure”). Relevant here, courts have upheld some suspicionless seizures in the context of pervasively regulated industries. *See, e.g., New York v. Burger*, 482 U.S. 691, 702–03 (1987) (establishing that such a seizure in that context is valid if: (1) there is a substantial government interest that informs the regulatory scheme pursuant to which the inspection is made; (2) the inspection is necessary to further the regulatory scheme; and (3) the statutory or regulatory scheme provides a constitutionally adequate substitute for a warrant). One such pervasively regulated industry, as recognized by the Fifth Circuit Court of Appeals, is commercial trucking. *United States v. Castelo*, 415 F.3d 407, 409–11 (5th Cir. 2005) (applying a three-prong test established by *Burger*).

⁹The Fifth Circuit Court of Appeals has upheld the constitutionality under the Fourth Amendment of a warrantless stop and inspection of a commercial truck on a Texas highway pursuant to Transportation Code subsection 644.103(a), but that case did not involve the weighing of the vehicle. *Fort*, 248 F.3d at 482.

S U M M A R Y

The Transportation Code grants the State broad powers regarding the inspection of commercial trucks on Texas highways: chapter 621 regulates the weight and size of all vehicles, while chapter 644 sets forth safety standards for commercial vehicles. A court would likely conclude that neither subsections 621.402(a) nor 644.103(a) authorize a deputy sheriff from Aransas County to operate a fixed commercial vehicle weigh station directing all commercial vehicles to exit a highway to be weighed. Accordingly, we do not determine whether the Fourth Amendment to the U.S. Constitution would permit the particular scenario as proposed.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, slightly slanted style.

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

LESLEY FRENCH
Chief of Staff

D. FORREST BRUMBAUGH
Deputy Attorney General for Legal Counsel

AUSTIN KINGHORN
Chair, Opinion Committee

BECKY P. CASARES
Assistant Attorney General, Opinion Committee