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OPINION COMMITTEE

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November 13, 2001

RQ-0466-JC

The Honorable John Cornyn  
Attorney General of Texas  
c/o Susan Gusky  
Chair, Opinion Committee  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

FILE # ML-42290-01  
I.D. # 42290

Re: Request for an Attorney General opinion related to the City of Garland's proposed automated red light enforcement ordinance

Dear General Cornyn:

The City of Garland has prepared a city ordinance relating to automated red light enforcement - imposing civil penalties upon the owners of vehicles that are recorded running red lights in the City by a photographic traffic monitoring system. The City would like to enforce this ordinance and, in that connection, I am writing you to request an opinion with respect to the validity of the City of Garland's automated red light enforcement ordinance.

This ordinance is similar in some but not all respects to the City of Richardson's proposed ordinance, which is the subject of opinion request no. RQ-0426-JC. The City of Garland's ordinance, which is attached for your review, while imposing civil liability in some instances, provides conditions under which a vehicle's owner can transfer or avoid liability and provides for an administrative adjudication. (§ 26.63) It also provides that civil penalties may be imposed only if the operator was not arrested or issued a citation for the same act as a violation of Section 544.007(d) of the Texas Transportation Code. (§ 26.64) This ordinance does not conflict with state law and does not attempt to "decriminalize" red light running, but is simply an effort to create civil liability for an activity that creates dangerous intersections, in the event a particular act has not been witnessed by a peace officer and is not prosecuted. Because there are both similarities and differences between the Garland ordinance and the Richardson proposed ordinance, we respectfully request that you consider this request separately from request no. RQ-0426-JC.

The City of Garland will forward a brief to you shortly, detailing the relevant legal considerations, however, this letter will outline the more salient issues.

Chairman, House Select Committee on Constitutional Revision  
Committees: Energy Resources, Public Safety



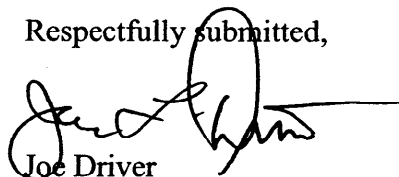
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The City of Garland is a home-rule municipality. As you know, home-rule cities are entitled to enact reasonable regulations for the health, safety and welfare of their citizens, pursuant to their police powers, unless clearly and specifically prohibited from doing so by the constitution or laws of this state. This ordinance is intended to provide an additional tool for the City to use in regulating the running of red lights, which, as you know poses a major risk to public safety. The ordinance does not decriminalize or interfere with criminal law enforcement for running red lights, but rather provides that if the camera catches a vehicle running a red light in the City, the owner of the vehicle may be required to pay a civil penalty, under certain circumstances. The ordinance does not conflict with state law since the civil penalty is not imposed if the act is criminally prosecuted pursuant to state law. Since this local regulation is ancillary to and in harmony with the general purpose of the state laws regulating red light running and a reasonable construction leaving both in effect can be reached, the ordinance is not preempted by state law. Moreover, defenses are provided to the owner, together with administrative adjudication procedures to protect innocent owners. The ordinance is a reasonable regulation of the intersections in the City, serves the health, safety and welfare of the people of the City, does not conflict with state law and, therefore, it should be permitted.

Thank you for your consideration of this request. We look forward to receiving your opinion with respect to this proposed ordinance. Please contact us if you have any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joe Driver", with a long horizontal line extending to the right from the end of the signature.

Joe Driver