

TEXAS DEPARTMENT OF PUBLIC SAFETY

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October 11, 2011



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The Honorable Greg Abbott
Attorney General of Texas
Opinion Committee
209 West 14th Street, 6th Floor
Austin, Texas 78701

FILE # ML-46837-11
I.D. # 46837

RQ-1002-GA

Re: Request for Attorney General Opinion

Dear Attorney General Abbott:

The Department of Public Safety (the Department) requests an opinion as to whether authority exists for the Department to contract with the Montgomery County Tax Assessor-Collector for the purpose of the county personnel issuing duplicate and renewal Texas driver license and identification certificates (DL/ID) at county facilities.

Background

The Driver License Division at the Department and the Montgomery County Tax Assessor-Collector would like to engage in a cooperative initiative for the purpose of issuing duplicate and renewal Texas DL/IDs. The initiative would permit the county assessor-collector's personnel to perform these transactions at county facilities. If successful, the Department would like to transition this pilot initiative across the state.

The Department has statutory authority to issue duplicate and renewal Texas DL/IDs under Chapter 521 of the Transportation Code. The Department is also granted the authority to implement its duties in a manner that provides the greatest convenience to the public. Tex. Transp. Code §521.002. It is anticipated that this cooperative initiative, accomplished through the use of an interlocal contract, will serve the public interest and further fulfill the Department's statutory responsibilities by providing convenience to the public. County tax assessor-collector offices currently provide certain services related to motor vehicle registrations and certificates of title on behalf of the Texas Department of Motor Vehicles, as authorized by Chapters 501, 502, and 520 of the Transportation Code; therefore, it serves public convenience to permit the public to also perform these related transactions affecting their DL/ID at these same locations. Furthermore, this collaborative initiative will result in the availability of more locations for the public to complete certain DL/ID transactions. Additional location options for the public will result in less crowding and minimized wait times at the Driver License offices across the state.

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The Department anticipates contracting with the county tax assessor-collector to perform only certain, limited renewal and duplicate DL/ID transactions that minimize the use of discretion by the county tax assessor-collector's personnel. The intention is that the services provided by county tax assessor-collector personnel will be limited to ministerial tasks. The services will include, but are not limited to, the collection of required fees from the customer and the collection of donations for the Donor Education, Awareness, and Registry (DEAR) Program and the Blindness Education, Screening, and Treatment (BEST) Program. The Department does not intend to pay the county tax assessor-collector for these services or otherwise reimburse the county tax assessor-collector's costs, but the Department will provide certain equipment necessary for performing these transactions. The fees associated with the issuance or renewal of a DL/ID are statutorily set in Subchapter R, Chapter 521 of the Transportation Code; however, the Montgomery County Tax Assessor-Collector would like to add a \$1 fee to each transaction to be paid by the customer to cover its costs.

It would appear that any contractual arrangement between the parties in this capacity is governed by Chapter 791 of the Government Code (the Interlocal Cooperation Act). However, Section 791.011(c)(1) provides that an interlocal contract may be used to provide a governmental function or service that each party to the contract is authorized to perform individually. Clearly, the Department is authorized to issue duplicate and renewal DL/IDs, but it is unchartered whether a county tax assessor-collector may have an implied authority to perform these transactions in this manner.

Therefore, I respectfully request an opinion on the questions outlined below.

Questions

- (1) May the Department delegate its statutory duties related to issuing duplicate and renewal Texas DL/IDs to a county tax assessor-collector through the use of an interlocal contract?
- (2) Does the county tax assessor-collector have authority to enter into an interlocal contract with the Department for the purpose of issuing duplicate and renewal DL/IDs?
- (3) If the contract is authorized, may the county tax assessor-collector collect an additional \$1 from the customer for each duplicate and renewal DL/ID transaction that it conducts for the purpose of covering the county tax assessor-collector's expenses related to providing services under the contract?

Thank you for your consideration of this request. If the Department can provide any additional information to you or your staff regarding this request, please contact Department General Counsel Phillip Adkins at (512) 424-2890.

Sincerely,



Steven C. McCraw
Director

Honorable Greg Abbott

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cc: The Honorable Tommy Williams, Texas Senate
The Honorable Larry Phillips, Texas House of Representatives
Cheryl MacBride, Deputy Director, Services
D. Phillip Adkins, General Counsel, Office of General Counsel
Rebecca Davio, Assistant Director, Driver License Division

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November 8, 2011

The Honorable Greg Abbott
Attorney General, State of Texas
P.O. Box 12548
Austin, Texas 78711

FILE # ML-46865-11
I.D. # 46865

RQ-1002-GA

Re: Request for Attorney General Opinion

Dear General Abbott:

Montgomery County ("County") and the Texas Department of Public Safety ("DPS") are proposing to establish a program related to the issuance of Driver's Licenses ("DL") and Personal Identification Certificates ("ID"). Under the proposed program, the County would provide services on behalf of DPS to issue duplicate and renewal DL and ID to eligible applicants. The services would be rendered by County employees at one or more offices of the County Tax Assessor-Collector, but would not be limited or restricted to residents of the County. The County employees providing said services would take an oath of deputation to serve as authorized agents of DPS. Any necessary training to carryout the program would be provided by DPS, and DPS also intends to lease (at no cost) to the County all required specialty equipment for issuance of renewal and duplicate DL/IDs. The County and DPS anticipate that public convenience would be significantly furthered by providing additional locations for members of the public to obtain renewal or duplicate DL/IDs, thereby allowing citizens to obtain multiple government services at one location while alleviating crowding at DPS offices.

This request seeks an opinion from your Office on the issue of whether a county has legal authority to participate in the proposed DL/ID issuance program discussed above. "It is well settled that a county can act only through its Commissioner's Court and the authority of the Commissioner's Court as the governing body of the county to make contracts in [sic] behalf of the county is limited to that conferred either expressly or by necessary implication by the constitution and laws of this state" *Jack v. State*, 694 S.W.2d 391, 397 (Tex. App.-San Antonio 1985, writ ref'd n.r.e.). Chapter 791 of the Texas Government Code (the "Interlocal Cooperation Act") provides that a local government may contract with another local government to perform governmental functions and services, but Interlocal contracts are limited to "...study the feasibility of the performance of a governmental function or service by an interlocal contract or provide a governmental function or service that each party to the contract is authorized to perform individually" Tex. Gov't Code Ann. §791.004(c) (2007). Analysis of the Texas

Constitution and statutes revealed no language directly addressing the proposed DL/ID issuance program discussed above.

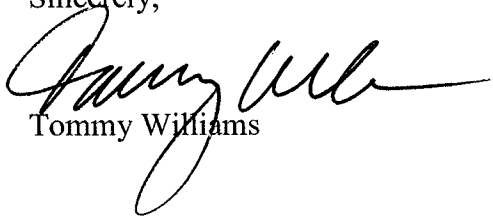
A source of implied authority may be found in the Texas Transportation Code, which expressly authorizes the County Tax Assessor-Collector to perform numerous actions related to the operation of motor vehicles in the State. Chapter 502 of the Texas Transportation Code tasks the County Tax Assessor-Collector with the registration of motor vehicles, registration renewals, title transfers, verification of evidence of financial responsibility, and verification of evidence of vehicle emissions inspections. Although the specific act of issuing duplicate and renewal DL and ID is not included under Chapter 502, there is a strong nexus between the County Tax Assessor-Collector's actions related to the registration of motor vehicles in the State and the issuance of DL, both of which are integral to the regulation of motor vehicles operating in the State. Additionally, language in the Texas Transportation Code clearly conveys the Legislature's support for alternative and convenient means of issuing duplicate and renewal DL and ID in the State. "The department shall implement its duties under this chapter in the manner that provides the greatest convenience to the public" Tex. Transp. Code Ann. § 521.002 (1995). "The department by rule may provide that the holder of a driver's license or identification certificate...may apply for the issuance of a duplicate license or certificate by mail, by telephone, over the Internet, or by other electronic means" Tex. Transp. Code Ann. § 521.146(c) (2001). "The department by rule may provide that the holder of a driver's license may renew the license by mail, by telephone, over the Internet, or by other electronic means" Tex. Transp. Code Ann. § 521.274(a) (2007).

Please advise as to the following questions:

1. Considering the strong nexus between a Tax Assessor-Collector's vehicle registration duties in the Texas Transportation Code and the issuance of renewal and duplicate DL, both of which regulate the operation of motor vehicles in the State, as well as the Legislature's intent to promote alternative and convenient means of issuing duplicate and renewal DL and ID, does the Texas Transportation Code provide sufficient authority for a county to establish and participate in the proposed DL/ID issuance program as discussed herein?
2. If question #1 is answered in the negative, then does any other express or implied authority exist for a county to establish and participate in the proposed DL/ID issuance program as discussed herein?

Thank you for your prompt consideration of this request. Please contact me if you have any questions or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tommy Williams', written in a cursive style. The signature is positioned above the printed name.

Tommy Williams