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RQ-0584-KP



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SAN ANTONIO, TEXAS 78205

February 27, 2025

Honorable Ken Paxton
Attorney General of Texas
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548
Via Email: opinion.committee@oag.texas.gov

Dear General Paxton,

I am requesting an opinion on the legality of a county officer's use of an automated traffic enforcement system to issue speeding citations without express statutory authority in accordance with Section 402.042-.043 of the Texas Government Code. I have attached a brief of the law relevant to this matter to assist in your review of the issue.

I would respectfully request that the opinion be completed and released as expeditiously as possible.

Thank you for your attention to this matter,

A handwritten signature in blue ink that reads "Joe D. Gonzales". The signature is written in a cursive style and is positioned above a horizontal line.

Joe D. Gonzales
Criminal District Attorney
Bexar County, Texas



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RE: The legality of using automated traffic enforcement system to issue speeding citations without express statutory authority.

Dear General Paxton:

This is to request that the Attorney General of Texas issue an Attorney General opinion pursuant to Section 402.042-.043 of the Texas Government Code.

QUESTION PRESENTED

May a Texas constable employ an automated traffic enforcement system that captures images of the driver's face and license plate to issue speeding citations, enabling law enforcement to issue such citations without direct officer-driver interaction, despite the absence of a statute in Texas authorizing such a system?

BACKGROUND OF REQUEST

In January 2025, Bexar County Precinct 3 Constable Mark Vojvodich (the "Constable") unilaterally introduced Scanning LIDAR (Light Detection and Ranging) technology as part of that Office's traffic enforcement efforts to issue citations for speeding violations.¹ The Constable did not

¹ Katrina Webber and Azian Bermea, *New System Can Catch, Cite Speeding Drivers Without Officer Interaction*, KSAT.Com, Jan. 13, 2025, available at <https://www.ksat.com/news/local/2025/01/14/new-system-can-catch-cite-speeding-drivers-without-officer-interaction/>

Simoné Simpson, *New Technology on the Road will help Bexar County Law Enforcement Crack Down on Speeding*, KENS5, Jan. 15, 2025, available at <https://www.kens5.com/article/news/local/law-enforcement/san-antonio-texas-bexar-county-precinct-3-constables-speeding-drivers-new-scanning-picture-technology-lidar-reduce-accidents->

seek approval from the Bexar County Commissioners Court for the acquisition of the equipment and it is unclear how his office obtained the system. This system employs cameras equipped with infrared lights capable of scanning up to five lanes of traffic simultaneously. When a vehicle exceeds a predetermined speed, the camera captures images of the driver's face and license plate, enabling law enforcement to subsequently issue citations by mail without interaction between officers and drivers.

Initially, violators received warnings for excessive speed. However, starting in February 2025, the system began issuing actual citations. By mid-February, the technology had detected over 47,000 vehicles, with approximately 4,000 exceeding the speed limit. According to statements made by the Constable's Office, 367 speeding citations have been issued.² The District Attorney's Office is now tasked with reviewing and prosecuting these citations. We must evaluate whether a valid legal basis exists to prosecute these citations, considering the manner in which the Constable has implemented the use of an automated traffic enforcement system. Currently, there is no statute or existing legislative authority that authorizes county officers to use an automated traffic enforcement system in the manner and means employed by the Constable.

In response to the Constable's use of the LIDAR system, in February 2025, Texas State Representative Briscoe Cain filed a bill to prohibit the use of such systems in Texas, arguing that they violate state laws banning speed cameras.³ Despite a previous opinion issued by your office involving the use of an automated enforcement system and the lack of any statutory authority, Constable Vojvodich contends that the portable nature of the Scanning LIDAR system, which is not affixed to traffic signals, exempts it from these prohibitions and allows him to engage in this activity.⁴

ARGUMENT AND AUTHORITIES

County officials have only those powers that are expressly granted by law or those powers that are necessary to perform those powers expressly granted. Tex. Att'y Gen. Op. No. GA-1002 (2013) at 1, *citing City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003); *see also* Tex Att'y Gen. Op. No. KP-0076 (2016) at 2-3 (concluding that because the Legislature had not enacted a law granting counties authority to utilize an automated enforcement system, a court would likely to conclude counties were not authorized to utilize such a system). While constables are elected and independent, their official duties fall within the context of county operations, including matters related to funding, potential liability, and legal duties. A constable is both a precinct officer and a county officer. *See Harris County v. Welswee*, 930 S.W.2d 659, 666-67 (Tex. App.–Houston [1st Dist.] 1996, writ denied). Additionally, the Local Government Code also lists constables as county-level officers. *See* Tex. Local Gov't Code § 87.012. Further, it is relevant for resolution of this opinion to note that a home-rule municipality does not depend on the legislature for specific grants of authority but instead, has a constitutional right of self-government and looks to the

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² Katrina Webber and Azian Bermea, *Speed Camera System Used in Bexar County Under Challenge by State Lawmaker*, KSAT.Com, Jan. 14, 2025, available at <https://www.ksat.com/news/local/2025/02/15/speed-camera-system-used-in-bexar-county-under-challenge-by-state-lawmaker/>

³ *Id.*

⁴ *Id.*

legislature only for specific limitations on its power.⁵ See Tex. Const. Art. XI § 5; *Quick v. City of Austin*, 7 S.W.3d 109, 122 (Tex. 1998).

As authority for his actions and with little explanation, the Constable has first pointed to a reference contained in the Texas Transportation Code which prohibits only municipalities from operating an automated traffic control system for speed enforcement but does not specifically reference counties.⁶ See Texas Transp. Code § 542.2035(a) (“A municipality may not implement or operate an automated traffic control system with respect to a highway or street under its jurisdiction for the purpose of enforcing compliance with posted speed limits...”). As additional support, the Constable then points to references contained in the Texas Transportation Code prohibiting photographic traffic signal enforcement systems or “red-light” cameras, seemingly to support his argument that his equipment is portable, does not work in conjunction with traffic-control signals, and is therefore exempt from the prohibitions of that law. The Constable has apparently taken the position that what is not prohibited by law is authorized. This position is inconsistent with the organic law of this state.

Here, the Legislature need only prohibit municipalities from operating automated traffic control systems as there is no comparable statute which would *authorize* county officers to utilize automated traffic control system technology. See Tex. Att’y Gen. Op. No. GA-1002 (2013) at 1, *citing City of San Antonio*, 111 S.W.3d at 28. Further, the Constable points to the definition section of the Texas Transportation Code for the proposition that the manner and means of his use of the automated traffic enforcement system technology exempts it from the statute’s prohibition because it is not installed, it is portable and does not work in conjunction with a traffic-control signal. See Tex. Transp. Code § 707.001(3)(A); § 707.020(a). For county officers to utilize automated traffic enforcement systems, there must be specific and direct authority authorizing them to do so. See Tex. Att’y Gen. Op. No. GA-1002 (2013) at 1, *citing City of San Antonio*, 111 S.W.3d at 28. As your office previously pointed out, “when the Legislature has authorized automated photographic or similar technology for the enforcement of traffic or vehicular laws, it has been specific about the circumstances and permissible uses...” Tex Att’y Gen. Op. No. KP-0076 (2016) at 2. To the knowledge of the undersigned, the Legislature, in its considered judgment, has not authorized any county officer to utilize automated traffic enforcement system technology supported by the criminal laws of this state for the purposes and in the manner that the Constable has deployed.

Moreover, when considering an analogous issue related to a county’s proposed use of a photographic insurance enforcement system, your office provided a clear analysis of the legal limits of the use of automated traffic enforcement systems under Texas law. See Tex Att’y Gen. Op. No. KP-0076 (2016). In that opinion, your office reviewed the circumstances under which the Legislature had authorized the use of automated enforcement systems in this state.⁷ Importantly, your office articulated very clearly that:

⁵ General-law cities, or those with populations under 5,000, operate under powers explicitly granted by state law similar to counties. See Tex. Const. art. XI, § 4.

⁶ The Constable provided a “Prosecution Guide” to a prosecutor assigned to review citations for possible prosecution in Justice of the Peace Court, Precinct 3 which referenced the Texas statutes cited in this opinion request.

⁷ Subsequently, the legislature has restricted the use of certain laws. See Tex. Trans. Code § 707.020(a) (Notwithstanding any other law, a local authority may **not** implement or operate a photographic traffic signal enforcement system with respect to a highway or street under the jurisdiction of the authority.

“These provisions illustrate that when the Legislature has authorized automated photographic or similar technology for the enforcement of traffic or vehicular laws, *it has been specific about the circumstances and permissible uses of the technology...*”

Tex Att’y Gen. Op. No. KP-0076 (2016) at 2. Your office went on to conclude under the circumstances presented that:

“[The Legislature] has enacted no law granting counties authority to utilize an automated photographic insurance enforcement system. Accordingly, a court is likely to conclude that counties are not authorized to utilize an automated photographic or similar system to enforce the financial responsibility laws in chapter 601 of the Transportation Code.”

Tex Att’y Gen. Op. No. KP-0076 (2016) at 2-3.

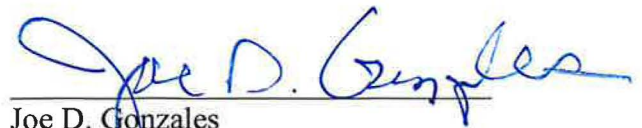
Considering this guidance from your office, it is evident that the current state of the law as it exists in this state does not support the use of automated traffic enforcement systems for the issuance of citations in our jurisdiction. Further, the reliance on such automated systems for traffic enforcement and the issuance of criminal citations by a county officer may conflict with Texas law.

Additionally, the implementation of automated traffic enforcement systems without a sufficient legal basis raises significant concerns related to the issuance of an unlawful citation and raises a potential violation of a resident’s constitutional rights. Prosecution by my office without a statutory basis could result in challenges to the legal validity of citations and impair the fairness and transparency of the traffic enforcement process and undermine trust in our legal system.

CONCLUSION

In light of the above, I respectfully request that the Attorney General issue an opinion confirming that the operation of automated traffic enforcement systems to issue subsequent speeding citations without officer-driver interaction by constables in Texas is unlawful under current Texas law and inconsistent with the guidance provided in Tex Att’y Gen. Op. No. KP-0076.

Thank you for your attention to this matter. I look forward to your guidance on this important legal issue. Should you require further clarification, I am available to discuss it in greater detail.



Joe D. Gonzales
Criminal District Attorney
Bexar County, Texas