



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**December 9, 1969**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

Hon. J. C. Dingwall  
State Highway Engineer  
Texas Highway Department  
11th and Brazos  
Austin, Texas 78703

Opinion No. M-536

Re: Purchase of Liability Insurance  
for Texas State Highway Depart-  
ment employees under provision  
of H. B. 378, 61st Legislature,  
R. S. 1969

Dear Mr. Dingwall:

You have requested the opinion of this office concerning the following question:

Can the Texas Highway Department purchase insurance to provide protection of its employees for torts covering personal injury or property damage and can the Comptroller legally pay the premiums for such insurance coverage under H. B. 378, 61st Legislature, R. S. 1969?

H. B. 378, Chapter 212, page 617, Acts of 61st Legislature, R. S., was passed on May 1, 1969. It took effect on September 1, 1969. The Statute reads in part as follows:

"Section 1. The State Highway Commission shall have the power and authority to insure the officers and employees of the Texas Highway Department from liability arising out of the use, operation, and maintenance of equipment, including but not limited to, automobiles, motor trucks, trailers, aircraft, motor graders, rollers, tractors, tractor power mowers, and other power equipment used or which may be used in connection with the laying out, construction, or maintenance of the roads, highways, rest areas, and other public grounds in the State of Texas. Such insurance shall be provided by the purchase of a policy or policies for that purpose from some reliable insurance company or companies authorized to transact such business in this state. All liability insurance so purchased shall be provided on a policy form or forms

approved by the State Board of Insurance as to form and by the attorney general as to liability."

The wording of H. B. 378 is substantially the same as the wording of H. B. 203 (Acts 61st Legislature, R. S., Chapter 797, page 2357), except that H. B. 378 applies specifically to the State Highway Department where H. B. 203 applies to all State departments which own and operate motor vehicles. Your attention is directed to Attorney General's Opinion M-501 (1969), wherein it is stated that the State Highway Department may purchase reasonable personal injury and property damage insurance coverage for its employees under H. B. 203, and the Comptroller may legally pay the premiums for such coverage.

H. B. 378 and H. B. 203 do not appear to be in conflict. H. B. 378 is a statute applicable only to the State Highway Department, and it authorizes a slightly broader range of insurance coverage than does H. B. 203, the general statute. The general rule is that statutes which are not positively repugnant will be construed so as to give effect, if possible, to both. Standard v. Sadler, 383 S.W.2d 391 (Tex.Sup. 1964). Further, H. B. 203, the later statute, did not expressly repeal H. B. 378, and repeal by implication is not favored. Wintermann v. McDonald, 129 Tex. 275, 102 S.W.2d 167 (1937).

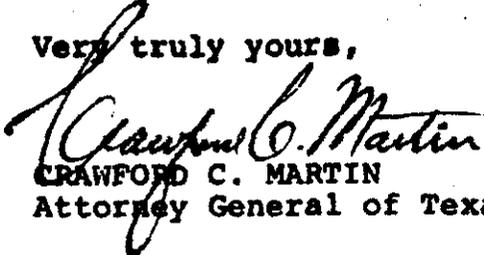
In consideration of the foregoing, you are advised that it is the opinion of this office that the State Highway Department may purchase personal injury and property damage insurance coverage for its employees under H. B. 378 as well as under H. B. 203, within the limits of coverage discussed in Attorney General's Opinion M-501, and the Comptroller may legally pay the premiums for such coverage.

#### S U M M A R Y

The State Highway Department may purchase personal injury and property damage insurance coverage for its employees under H. B. 378 (Acts 61st Legislature, R. S. 1969, Chapter 212, page 617), within the limits of coverage discussed in Attorney General's Opinion M-501 (1969), and the Comptroller may legally pay the premiums for such coverage.

Hon. J. C. Dingwall, Page 3 (M-536 )

Very truly yours,

  
CRAWFORD C. MARTIN  
Attorney General of Texas

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