



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

February 17, 1989

Honorable Mike Driscoll  
Harris County Attorney  
1001 Preston, Suite 634  
Houston, Texas 77002

LO-89-14

Dear Mr. Driscoll:

Article 6687-1, V.T.C.S., the Certificate of Title Act, established a system of state-wide registration of motor vehicles. The act requires the owner of a motor vehicle to apply for a certificate to the county tax assessor-collector, on a form provided by the Department of Highways and Public Transportation [hereinafter the department]. After the completed form is forwarded to the department, the department then issues to the applicant a certificate of title. Section 38 of the act sets forth the grounds for which the department may refuse to issue a certificate of title or revoke one already issued. If the department refuses to issue a certificate or revokes one already issued, section 39 of the act affords any person interested in that motor vehicle a right to a hearing before "the designated agent" of the department in order to challenge the department's action. You ask the following question:

Can the County Tax Assessor-Collector be relieved of his statutory authority or duty to conduct hearings regarding denials of certificates of title to motor vehicles pursuant to section 39 of the Certificate of Title Act by rules and regulations of the Motor Vehicle Division of the State Department of Highways and Public Transportation?

We answer your question in the negative.

Section 39 of article 6687-1, V.T.C.S., provides the following:

Any person interested in a motor vehicle to which the Department has refused to issue a certificate of title or has suspended or revoked the certificate of title, feeling aggrieved, may apply to the designated agent of the county of such interested person's domicile for a hearing, whereupon such designated agent shall, on the same day such application for hearing is received by him, notify the Department of the date of the hearing, which shall not be less than ten (10) days nor more than fifteen (15) days, and at such hearing such applicant and the Department may submit evidence, and a ruling of the designated agent shall bind both parties as to whether or not the Department has acted justly in the premises.

Additionally, section 26 of the act defines the phrase "designated agent" as follows:

The term 'Designated Agent' means each County Tax Collector in this State who may perform his duties under this Act through any regular deputy. (Emphasis added).

Section 55 of the act confers on the department broad rule-making power:

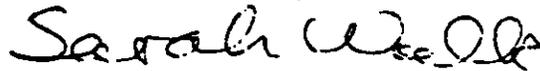
The Department may, from time to time, promulgate such reasonable rules and regulations as it may deem necessary to carry out the orderly operation of this Act and to prescribe such forms as are herein provided for, as well as such others as it may deem proper, and shall provide the several designated agents within this State with sufficient supply thereof. (Emphasis added.)

However, the department has not yet promulgated any rules regarding section 39 hearings. We have been informed that the department is considering promulgating such rules and have received a preliminary draft of such rules, but none has yet been published pursuant to article 6252-13a, V.T.C.S.

You have not asked about any specific rules promulgated by the department. Therefore, we can address only the department's general rule-making authority. In this instance, article 6687-1, V.T.C.S., expressly confers authority on the county tax assessor-collector to conduct a hearing challenging a decision by the department to deny or revoke the issuance of a certificate of title to an applicant. At the same time, the statute confers broad rule-making authority on the department. When the legislature acts with respect to a particular matter, an administrative agency may not act with respect to that matter so as to nullify the legislative action, even though the matter be within the agency's general regulatory field. Cobra Oil & Gas Corp. v. Sadler, 447 S.W.2d 887 (Tex. 1968); State v. Jackson, 376 S.W.2d 341 (Tex. 1964). Therefore, any rule or regulation adopted by the department that acts to usurp the county tax assessor-collector's authority regarding section 39 hearings cannot be sustained.

Accordingly, we conclude that the Department of Highways and Public Transportation is without authority to promulgate rules that have the effect of usurping the authority conferred by section 39 of article 6687-1, V.T.C.S., on the county tax assessor-collectors to conduct hearings governing certificates of title.

Very truly yours,



Sarah Woelk, Chief  
Letter Opinion Section



Rick Gilpin, Chairman  
Opinion Committee

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APPROVED: OPINION COMMITTEE

RG/SW/JM/mc

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