



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 29, 1998

Mr. Dudley M. Thomas  
Director  
Texas Department of Public Safety  
5805 North Lamar Boulevard, Box 4087  
Austin, Texas 78773-0001

Letter Opinion No. 98-127

Re: Whether the 1997 amendment to Transportation Code section 642.002, which requires certain motor vehicles to have markings identifying the address of the vehicle's owner or operator, is invalid because it was intended to impose the address requirement only on tow trucks, and related question (RQ-1117)

Dear Mr. Thomas:

In 1997 the Texas Legislature amended Transportation Code section 642.002 to impose upon certain motor vehicles a requirement that the owner's or operator's address be marked on each side of the power unit. Assuming the legislature intended the address requirement to apply only to tow trucks, you ask whether the requirement's unintentional breadth is a mistake that invalidates the address requirement entirely. We conclude it is not a mistake warranting invalidation. You next ask whether the Department of Public Safety ("department") may adopt an enforcement policy that is consistent with the presumed intent of the amendment, rather than the language of the section itself. You specifically ask whether such a limited enforcement policy would constitute an illegal suspension of the law or an unconstitutional method of selective enforcement.<sup>1</sup> We conclude the department may not adopt such a rule, but for a reason you do not mention: section 642.002 does not authorize the department to adopt a rule regarding any issue but the "form of the [identifying] markings."

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<sup>1</sup>Briefs submitted in connection with your request suggest that the portion of Transportation Code section 642.002 about which you ask may be preempted by federal requirements to the extent the state law applies to trucks that are involved in interstate commerce. See Letter from Timothy Mashburn, Felts, Mashburn & Contreras, P.C., to Sarah J. Shirley, Chair, Opinion Comm., Office of the Attorney General (May 19, 1998) (on file with the Opinion Comm.); Letter from Paul D. Angenend, Saegert, Angenend & Augustine, to Sarah Shirley, Chair, Opinion Comm., Office of the Attorney General (May 18, 1998) (on file with the Opinion Comm.). Because you do not raise the issue, and because this office is unauthorized to resolve issues raised by these attorneys, see Gov't Code §§ 402.042, .045, we do not consider the issue.

The issues you raise revolve completely around 1997 amendments to Transportation Code section 642.002, which generally requires identifying markings on particular motor vehicles:

(a) A person commits an offense if:

(1) the person operates on a public street, road, or highway:

(A) a commercial motor vehicle<sup>2</sup> that has three or more axles;

(B) a truck-tractor;<sup>3</sup>

(C) a road-tractor;<sup>4</sup> *or*

(D) a tow truck;<sup>5</sup> and

(2) the vehicle does not have on each side of the power unit identifying markings that:

(A) show the name *and address, including city and state*, of the owner or operator of the vehicle;

(B) have clearly legible letters and numbers of a height of at least two inches, *and*

(C) *show the motor carrier registration number in clearly legible letters and numbers, if the vehicle is required to be registered under this chapter.*

*(b) The owner of a vehicle commits an offense if the owner or operator permits another to operate a vehicle in violation of Subsection (a).*

*(c) The Texas Department of Transportation by rule may prescribe additional requirements regarding the form of the markings required by Subsection (a)(2) that are not inconsistent with that subsection.*

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<sup>2</sup>See Transp. Code § 642.001(1) (defining “motor vehicle”).

<sup>3</sup>A “truck-tractor” is “a motor vehicle that: (A) transports passenger cars loaded on the vehicle while the vehicle is engaged with a semitrailer transporting passenger cars; or (B) is designed or used primarily for pulling other vehicles and constructed to carry only a part of the weight of a vehicle it is pulling.” *Id.* § 642.001(5).

<sup>4</sup>A “road-tractor” is “a motor vehicle that is: (A) used for towing manufactured housing; or (B) designed and used for drawing other vehicles and not constructed so as to carry any load independently or as a part of the weight of a vehicle or load it is drawing.” *Id.* § 642.001(4).

<sup>5</sup>*Id.* § 642.001(6); *see also id.* § 643.001(7) (defining “tow truck”).

(d) An offense under this section is a Class C misdemeanor.

We have italicized the language added in 1997,<sup>6</sup> which is the focal point of your request.

Because section 642.002(a) plainly does not limit the requirement that vehicles bear markings identifying the owner's or operator's address only to tow trucks, we cannot construe the requirement to be so limited. The section unambiguously requires all vehicles described in subsections (A) through (D) to bear the address markings. Where statutory language is plain, we must effectuate the plain meaning, without recourse to the legislature's intent.<sup>7</sup> Nevertheless, for purposes of this opinion, we will accept your assumption that the legislature intended the address requirement to apply only to tow trucks.<sup>8</sup>

In response to your first question, we must conclude that it was not a fatal mistake for the legislature to write section 642.002 to apply the address requirement to all the motor vehicles listed in subsection (a)(1)(A), (B), (C), even if the legislature intended that the requirement would apply only to tow trucks. A court may disregard an obvious error of a clerical, grammatical, or typographical nature.<sup>9</sup> Courts have applied this policy only to correct minute errors, such as where the word "heretofore" should be "theretofore."<sup>10</sup> Similarly, the Texas Supreme Court permitted a correction where the enrolled bill as signed by the governor stated that section 7 of the bill would take effect one year after the other sections of the bill, but the bill as passed by the legislature stated that section 5 would take effect one year later than the remainder of the bill.<sup>11</sup> The correction was

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<sup>6</sup>See Act of June 1, 1997, 75th Leg., R.S., ch. 1171, § 4.12, 1997 Tex. Gen. Laws 4427, 4457-58.

<sup>7</sup>See *Boykin v. State*, 818 S.W.2d 782, 785-86 & 786 n.4 (Tex. Crim. App. 1991).

<sup>8</sup>Indeed, Senator Armbrister stated in a letter to you that the authors and conference committee members, who inserted the amendments to section 642.002 into Senate Bill 370, intended that the amendment apply only to tow trucks. See Letter from The Honorable Ken Armbrister, Senator, Texas Legislature, to Colonel Dudley Thomas, Director, Texas Department of Public Safety (Feb. 17, 1998) (on file with Attorney General Opinion Comm.); see also S.R. 982, 75th Leg., R.S. (visited Aug. 7, 1998) <<http://www.capitol.state.tx.us> (explaining that addition is necessary to S.B. 370 "to protect consumers . . . by requiring that tow trucks be clearly marked so as to identify the owner or operator of the tow truck"); H.R. 1300 75th Leg., R.S. (visited Aug. 7, 1998) <<http://www.capitol.state.tx.us> (same); Conference Comm. Report on S.B. 370, 75th Leg., R.S. (1997) (states that amendment, added by conference committee, requires owner or operator of tow truck to display his or her name, address, and registration number "to ensure consumer protection"). Nevertheless, as the Senator recognizes in his letter, the statute's plain language imposes the address requirement on three classes of vehicles other than tow trucks: commercial motor vehicles with three or more axles; truck-tractors; and road-tractors. See Transp. Code § 642.002(a)(1)(A), (B), (C).

<sup>9</sup>See 67 TEX. JUR. 3D *Statutes* § 117, at 699-700 (1989).

<sup>10</sup>See *Millers' Mut. Fire Ins. Co. v. City of Austin*, 210 S.W. 825, 828 (Tex. Civ. App.--San Antonio 1919, no writ).

<sup>11</sup>See *Association of Tex. Prof'l Educators v. Kirby*, 788 S.W.2d 827, 828-30 (Tex. 1990).

necessary, the court stated to “avoid elevating clerical error over constitutional law.”<sup>12</sup> The problem here about which you ask is not obvious on its face, and it is far more substantial than correcting a clerical, grammatical, or typographical error. Rather, to revise Transportation Code section 642.002 as you suggest, we would have to rewrite the whole section. We find no judicial precedent justifying such a substantial revision of the legislature’s enactment.

With respect to your second question, whether the department may adopt an enforcement “policy” that is consistent with the assumed legislative intent, you do not indicate what you mean by the term “policy.” We assume you mean “rule.”

We conclude that the department may not adopt a rule under which the department would enforce the address-marking requirement of section 642.002 only against tow trucks. You describe the proposed rule as “a modified enforcement policy . . . such that the relevant signage provisions . . . requiring an address would be enforced only against” tow trucks. You suggest that such a rule might bridge the gap between what we assume the legislature intended and the statute’s plain language.

The department’s authority to adopt rules regulating the identifying markings mandated by Transportation Code section 642.002 does not encompass the rule you propose. Subsection (c) restricts the department to prescribing “additional requirements regarding the form of the markings.” An administrative agency may not promulgate rules beyond the agency’s express or implied authority.<sup>13</sup> Because a rule concerning enforcement of the address-marking requirement does not concern the form of the required markings, we do not believe the department may adopt such a rule.<sup>14</sup>

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<sup>12</sup>See *id.* at 829-30.

<sup>13</sup>See Attorney General Opinions DM-336 (1995) at 2; JM-1279 (1990) at 1 (citing *Gerst v. Oak Cliff Sav. & Loan Ass’n*, 432 S.W.2d 702 (Tex. 1968); *Gulf Land Co. v. Atlantic Ref. Co.*, 131 S.W.2d 73 (Tex. 1939)).

<sup>14</sup>We are unaware of any general rule-making authority granted to the department.

S U M M A R Y

The 1997 amendment to Transportation Code section 642.002, which requires certain motor vehicles to have markings identifying the address of the vehicle's owner or operator, is not invalid because it may have been intended to impose the address requirement only on tow trucks. The Department of Transportation may not adopt a rule modifying its enforcement of section 642.002 to conform to the legislative intent rather than the plain language of the statute.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kimberly K. Oltrogge", with a long horizontal flourish extending to the right.

Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee