



The Senate of
The State of Texas
Committee on International Relations,
Trade and Technology

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APR 14 1998

Opinion Committee

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1126
April 2, 1998

The Honorable Dan Morales
Attorney General of the State of Texas
P.O. Box 12548
Austin, TX 78711

FILED ML - 40214-98
I.L. 40214

Dear General Morales:

As Chairman of the Senate International Relations, Trade and Technology Committee, I respectfully request your opinion on the questions presented by this letter and, based on your answers to those questions, I request that you consider whether a redetermination of Letter Opinion No. 98-010 should be made. Also, I ask that Letter Opinion No. 98-010 be withdrawn until the questions raised by this request are resolved.

On February 19, 1998, your office issued Letter Opinion No. 98-010. In responding to a narrow question raised by the Texas Department of Licensing and Regulation, the opinion determined that the department does not have the authority to adopt rules *under Section 10* of the Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) to allow certain persons, including persons repairing or servicing automotive air conditioners, to purchase class I and class II refrigerants.

It is important to note that the opinion did not fully analyze the interaction between Section 6 of the Air Conditioning and Refrigeration Contractor License Law, which exempts seven groups of persons from that law, and Section 10 of that law. Also, the opinion did not fully analyze the legislative history of Section 10, which restricts the purchase of class I and class II refrigerants by certain groups.

As a result of the February 19, 1998, letter opinion, an automotive mechanic or repair shop may not purchase automotive class I or class II refrigerants to repair or recharge a car's air conditioning system. The language of the letter opinion has the effect of prohibiting automobile mechanics from repairing or servicing an estimated 10 million automobiles in Texas made before 1994. Under the opinion, an automotive mechanic who purchases a class I or class II refrigerant for use in an automobile commits a Class B misdemeanor and is subject to a fine not to exceed \$2,000, a jail term not to exceed 180 days, or both.

The Honorable Dan Morales
April 1, 1998
Page 2

Because of these concerns, I request that you answer the following questions:

(1) How does Section 10, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), affect a person who is exempt from that law under Section 6(a)(3), (5), (6), or (7) of that law?

(2) May a person who is exempt from the Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) under Section 6(a)(3), (5), (6), or (7) of that law and who complies with all other applicable state or federal laws purchase class I or class II refrigerants without incurring criminal liability under Section 10 of that law?

(3) Does the legislative history of Section 10, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), indicate that automotive mechanics performing air conditioning services on motor vehicles are exempt from Section 10 of that law?

In analyzing these questions, please consider that Section 6, Air Conditioning and Refrigeration Contractor License Law, states that the Air Conditioning and Refrigeration Contractor License Law does not apply to seven groups of persons, including persons who are regularly employed by a regulated electric or gas utility who perform air conditioning and refrigeration contracting (Section 6(a)(3)), persons who are employed by and perform process cooling or heating work for an industrial operation such as a chemical plant or refinery (Section 6(a)(5)), persons who perform work on certain types of air conditioning or refrigeration products or equipment (Section 6(a)(6)), and auto mechanics who perform air conditioning services on a motor vehicle air conditioning unit (Section 6(a)(7)).

Under a general rule of statutory construction, codified as Section 312.008, Government Code, a reference to any portion of a "statute, rule, or regulation applies to all reenactments, revisions, or amendments of the statute, rule, or regulation." Thus, an amendment should be construed and harmonized with the act that it amends and of which it forms a part. *American Surety Co. of New York v. Axtell Co.*, 36 S.W.2d 715 (Tex. Comm'n App. 1931), answer conformed to, 38 S.W.2d 1110; *Shipley v. Floydada Independent School Dist.*, 250 S.W. 159 (Tex. Comm'n App. 1923, judgment adopted). Specifically, a new section, added by amendment, should be construed in view of the original statute as it stands after enactment of the amendment, and it and all sections of the new law must be regarded as a harmonious whole with all sections mutually acting on each other. *Schlichting v. Texas State Board of Medical Examiners*, 310 S.W.2d 557 (Tex. 1958); *Grant v. United Gas Pipe Line Co.*, 457 S.W.2d 315 (Tex. Civ. App.--Corpus Christi 1970, writ refused n.r.e.). Accordingly, the reference to the exemption of certain persons from "this Act" under Sections 6(a)(3), (5), (6), and (7) applies to all amendments to the act, including House Bill 2025, Acts of the 75th Legislature, Regular Session, 1997, which added Section 10 to the act.

Also, please consider the legislative history and legislative intent of House Bill 2025, Acts

The Honorable Dan Morales
April 1, 1998
Page 3

of the 75th Legislature, Regular Session, 1997. Section 312.005, Government Code, states:
In interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy.

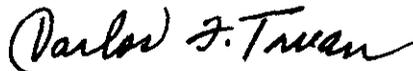
In the House Licensing and Administrative Procedures Committee on April 7, 1997, Representative Pickett, the author of House Bill 2025, stated that House Bill 2025 "does not affect auto dealers." In the Senate International Relations, Trade & Technology Committee on May 14, 1997, Senator Ogden said, "So homeowners are exempt and automobile dealers would not be under this bill." Therefore, even if Section 10, Air Conditioning and Refrigeration Contractor License Law, is unclear as to whether persons under Section 6(a)(3), (5), (6), or (7) are exempt entirely from the act, the legislative intent of House Bill 2025 excludes auto dealers and others who employ individuals exempt under Section 6(a)(7) from the effect of Section 10 of the act. Copies of committee and floor deliberations and other information on House Bill 2025 are included with this request.

In addition, Section 312.002, Government Code, requires the application of the general rule for the construction of the meaning of civil statutes: "words shall be given their ordinary meaning." Moreover, "in determining the meaning of words . . . , consideration should be given to the entire act, its nature and object, and the consequences that would follow from each construction." *Sayre v. Mullins*, 681 S.W.2d 25, 27 (Tex. 1984) (quoting *Chisholm v. Bewley Mills*, 287 S.W.2d 943, 945 (Tex. 1956)). Thus, the plain language of Section 6 that the act does not apply to certain persons specifically removes those individuals exempt under Sections 6(a)(3), (5), (6), and (7) from the application of the Air Conditioning and Refrigeration Contractor License Law in its entirety.

Finally, please consider the language of Section 10 of that law, which makes no reference to persons exempt under Sections 6(a)(3), (5), (6), and (7). If a person is not specifically covered by Section 10, it seems valid to conclude that the person is not subject to Section 10 because the regulation of that person is forbidden under Section 6. Section 10, Air Conditioning and Refrigeration Contractor License Law, does not conflict with the exemptions that Section 6 of that act creates for persons in Subsections (a)(3), (5), (6), and (7).

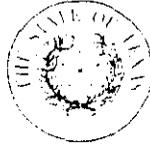
Thank you in advance for your opinion on these questions.

Sincerely,



Cárlos F. Truan,
Chairman

Enclosures



JOHN J. CARONA
STATE SENATOR

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COMMITTEES:
STATE AFFAIRS
HEALTH & HUMAN SERVICES
INTERGOVERNMENTAL RELATIONS
INTERNATIONAL RELATIONS,
TRADE & TECHNOLOGY,
VICE CHAIRMAN

March 27, 1998

The Honorable Carlos Truan, Chairman
International Relations, Trade and Technology Committee
Texas Senate
470 Sam Houston Building
Austin, TX 78711

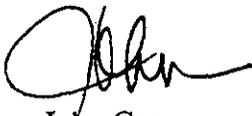
Dear Carlos:

I am writing to request that you, as Chairman of the International Relations, Trade and Technology Committee, ask for reconsideration of an Attorney General's opinion relative to H.B. 2025. During the 75th session, I sponsored H.B. 2025, legislation relating to the regulation of the sale and use of certain refrigerants.

The Texas Department of Licensing and Regulation asked the Attorney General's office for an interpretation of H.B. 2025 (copy of request enclosed). The opinion was issued by the Attorney General on February 19, 1998 (copy of opinion enclosed). It has now come to our attention that this opinion would bar auto mechanics from purchasing refrigerants, which was not the intent of the legislation. Due to the critical nature of the effects of the opinion, I would appreciate it if this request could be handled in an expedited manner.

Thank you for your time and consideration of this matter. The Texas Legislative Council is drafting the reconsideration request, which I will forward to you should you be agreeable to submitting it. If you need any further information on this issue, please contact Rebecca Hairgrove of my staff at 463-0116.

Sincerely,



John Carona

Enclosures

TEXAS DEPARTMENT OF LICENSING AND REGULATION



Executive Director's Office
P.O. Box 12157 Austin, Texas 78711 (512)463-3173 FAX (512)475-2874

October 15, 1997

The Honorable Dan Morales
Attorney General of Texas
Price Daniel Senior Building
Austin, Texas 78701

Attn: OPINION COMMITTEE

Re: Request for Attorney General Opinion under TEX. REV. CIV. STAT. ANN. Article 8861
(Vernon 1993) (hereafter referred to as Article 8861) and HB2025

Dear General Morales:

The Texas Department of Licensing and Regulation requests your opinion concerning the effect of the amendments to Article 8861 by HB2025 as passed by the 75th Legislature.

Section 6 of Article 8861 exempts certain individuals from licensure requirements. Section 10(e), as added by HB2025, states,

"Except as provided by Subsection (g) of this section, a person may purchase refrigerants or equipment containing a refrigerant in this state only if that person:

- (1) is licensed under this Act or a municipal ordinance that complies with section 9 of this Act; or
- (2) holds a certificate of registration issued by the department under this section."

Section 10(d) requires individuals who qualify as maintenance employees under Section 6(a)(2) and engineers qualifying under Section 6(a)(4) to obtain a Certificate of Registration from the Department if they purchase refrigerant products. Homeowners that are exempted from licensing requirements are not required to provide sellers of refrigerants with evidence of exemption, as provided in Section 10(g). Other individuals (employed by an electric or gas utility, employed by an industrial operation, performs a/c work on portable or temporary units, performs a/c work on motor vehicles) exempted by Article 8861 from licensing requirements are not provided with a method to purchase refrigerants in Section 10. Sec. 10(f) authorizes the commissioner to establish by rule, the evidentiary requirements purchasers of refrigerant products must show sellers.

The Honorable Dan Morales
October 15, 1997
Page 2

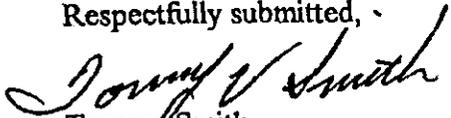
It appears that other individuals exempt from licensing requirements under sec. 6(a) may not purchase refrigerant products after January 1, 1998 unless they are licensed as air conditioning contractors under Article 8861. The Department would like to know the following:

May the Department promulgate a rule authorizing individuals who are exempted under Article 8861, and ineligible to register under HB 2025, to purchase refrigerant products?

If the Department can adopt such a rule, may the Department require of those persons claiming an exemption under sec. 6(a), to provide proof of their exemption to the seller of refrigerant products?

I appreciate your service in answering these questions.

Respectfully submitted, -



Tommy Smith
Executive Director/Commissioner

TVS/TL/dm

cc: Theda Lambert, General Counsel

Attach: Article 8861
HB 2025