



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

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The Honorable Jo Anne Bernal
El Paso County Attorney
500 East San Antonio, Room 503
El Paso, Texas 79901

Opinion No. KP-0285

Re: Construction of Transportation Code section 502.010, concerning a county assessor-collector's authority to refuse to register motor vehicles based on certain "scofflaw" information (RQ-0297-KP)

Dear Ms. Bernal:

You ask about the construction of Transportation Code section 502.010, concerning a county assessor-collector's authority to refuse to register motor vehicles based on certain "scofflaw" information specified in the statute.¹ *See* TEX. TRANSP. CODE § 502.010 (titled "County Scofflaw").

Under subsection 502.010(a), a county assessor-collector and the Department of Motor Vehicles (the "DMV") may refuse to register a motor vehicle based on specified information about an owner's fine, fee, or tax owed to the county or the owner's failure to appear in certain criminal matters. *Id.* § 502.010(a); *see also id.* § 502.001(11) (defining "Department" in chapter 502 as the Department of Motor Vehicles). Subsection 502.010(b) authorizes a county to contract with the DMV to provide information to the DMV necessary to determine whether to refuse registration under subsection 502.010(a). *Id.* § 502.010(b). In your first question, you ask whether the duties set forth in section 502.010, subsections (b-1) through (f), apply to a county that does not have an information-sharing contract with the DMV. Request Letter at 1.

Section 502.010 is a lengthy statute whose subsections cross-reference each other as well as other statutes. Your question requires a reading of section 502.010 according to the statutory construction principles utilized by the courts. Courts strive to give effect to the Legislature's intent as expressed in the statute's plain language. *Molinet v. Kimbrell*, 356 S.W.3d 407, 414 (Tex. 2011). The courts construe statutes "as a cohesive, contextual whole, accepting that [the] lawmaker-authors chose their words carefully, both in what they included and in what they excluded." *Sommers ex rel. Ala. & Dunlavy, Ltd. v. Sandcastle Homes, Inc.*, 521 S.W.3d 749, 754 (Tex. 2017).

¹*See* Letter from Honorable Jo Anne Bernal, El Paso Cty. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (July 17, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> ("Request Letter").

We begin with subsection (a), which states that “a county assessor-collector or the [DMV] *may* refuse to register a motor vehicle if the assessor-collector or the [DMV] receives information that the owner of the vehicle: (1) owes the county money for a fine, fee, or tax that is past due; or (2) failed to appear” in specified criminal matters. TEX. TRANSP. CODE § 502.010(a) (emphasis added). The word “may” in a statute ordinarily “creates discretionary authority or grants permission or a power” rather than a mandatory duty. TEX. GOV’T CODE § 311.016(1), (2). Thus, subsection (a) authorizes but does not require county assessor-collectors and the DMV to refuse to register a motor vehicle upon receiving the specified information about nonpayment or failure to appear. TEX. TRANSP. CODE § 502.010(a).

While several other subsections of section 502.010 condition their terms on the existence of an information-sharing contract with the DMV, subsection (a) does not. Subsection (b) authorizes but does not require a county to contract with the DMV for information sharing. *See id.* § 502.010(b) (stating “[a] county *may* contract” (emphasis added)). Subsection (c) requires a county having such a contract to give the DMV notice about specific information concerning the owner. *Id.* § 502.010(c). Subsection (d), limiting the authority to refuse registration, is conditioned on receipt of subsection (c) notice from a contracting county. *See id.* § 502.010(d). Subsection (e) concerns contract terms. *See id.* § 502.010(e). Subsections (f), (f-1), (i), and (j) concern an additional fee that a county may impose when it contracts with the DMV. *Id.* § 502.010(f), (f-1), (i), (j). “When the Legislature employs a term in one section of a statute and excludes it in another section, the term should not be implied where excluded.” *Utts v. Short*, 81 S.W.3d 822, 846 (Tex. 2002). Applying that rule here, subsection (a) authorizes a county assessor-collector to refuse registration for the specified reasons whether or not a county has an information-sharing contract with the DMV. TEX. TRANSP. CODE § 502.010(a). By the same token, subsections (c), (d), (e), and (f) do not concern counties without an information-sharing contract with the DMV.

The last subsection you specifically ask about is subsection (b-1). Request Letter at 1. The first sentence states that certain “[i]nformation that is provided to make a determination under Subsection (a)(1)” expires on the second anniversary of the date the information was provided and may not be used to refuse registration thereafter. TEX. TRANSP. CODE § 502.010(b-1). The second sentence provides for the expiration of information about other fines or fees that become past due prior to the second anniversary of the initial provision of information “provided under subsection (b).” *Id.* The reference to subsection (b) in the second sentence but not in the first suggests that the first sentence applies in all counties regardless of whether the county has an information sharing contract with the DMV. *See id.* And by its terms, the second sentence of subsection (b-1) applies to only those counties that have such a contract. *See id.*

In your second question you ask whether information about an owner’s failure to appear for criminal matters specified in subsection (a)(2) expires on the second anniversary of when the information was provided to the local assessor-collector. Request Letter at 1. Subsection (a)(2) authorizes an assessor-collector or the DMV to refuse to register a vehicle upon receiving information that the vehicle owner “failed to appear in connection with a complaint, citation, information, or indictment in a court in the county in which a criminal proceeding is pending against the owner.” TEX. TRANSP. CODE § 502.010(a)(2). Subsection (b-1) provides for the expiration of information provided under only subsection 502.010(a)(1) that “concerns the past due status of a fine or fee” or subsequent “information about other fines or fees.” *Id.* § 502.010(b-

1). No provision in section 502.010 addresses the expiration of information concerning an owner's failure to appear for the specified criminal matters.

Finally, you ask whether a county's contract under section 706.002 of the Transportation Code affects its duties under section 502.010. Request Letter at 1. Section 706.002 provides that a political subdivision may enter into a contract to provide information to the Department of Public Safety to deny renewal of the driver's license of a person "who fails to appear for a complaint or citation or fails to pay or satisfy a judgment ordering payment of a fine and cost in the manner ordered by the court in a matter involving any offense." TEX. TRANSP. CODE § 706.002; *see also id.* § 706.001(2) (defining "Department" for purposes of chapter 706 as the Department of Public Safety). Although similarities exist between the procedures for denying a driver's license renewal in chapter 706 and refusing vehicle registration under chapter 502, no provision in either chapter equates the two information-sharing contracts. Consequently, a county's contract with the Department of Public Safety under section 706.002 of the Transportation Code does not affect its authority or duties under section 502.010.

S U M M A R Y

In a county that does not have an information-sharing contract with the Department of Motor Vehicles, the county assessor-collector may refuse to register a motor vehicle under subsection 502.010(a) of the Transportation Code upon receipt of information that the owner owes the county a fine, fee, or tax that is past due, or failed to appear in certain criminal matters as specified in the statute. Subsections (c), (d), (e), (f), and the second sentence of subsection (b-1) are not applicable to a county that does not have an information-sharing contract with the Department of Motor Vehicles.

Under subsection 502.010(b-1), information provided to make a determination whether to refuse to register a motor vehicle under subsection 502.010(a)(1) expires on the second anniversary of the date information was provided and applies whether or not the county has an information sharing contract with the Department of Motor Vehicles. Section 502.010 does not provide for the expiration of information about a vehicle owner's failure to appear in the specified criminal matters.

A county's contract with the Department of Public Safety relating to drivers license renewal under section 706.002 of the Transportation Code does not affect its authority or duties with respect to motor vehicle registration under section 502.010.

Very truly yours,



KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

RYAN L. BANGERT
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

WILLIAM A. HILL
Assistant Attorney General, Opinion Committee