



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 4, 2020

Mr. Steven C. McCraw
Director
Texas Department of Public Safety
Post Office Box 4087
Austin, Texas 78773-0001

Opinion No. KP-0341

Re: Whether a political subdivision may require the Department of Public Safety to lift driver license renewal holds requested under Transportation Code chapter 706 if the political subdivision has not met the requirements for sending a clearance notice under section 706.005 or has not collected the reimbursement fee under section 706.006 (RQ-0379-KP)

Dear Mr. McCraw:

You ask whether a political subdivision that contracted with the Department of Public Safety (“the Department”) pursuant to section 706.002 of the Transportation Code may require the Department to lift driver license renewal holds in certain circumstances.¹

Chapter 706 of the Transportation Code creates what you refer to as the “Failure to Appear Program.” Request Letter at 1; *see* TEX. TRANSP. CODE §§ 706.001–.012. That chapter authorizes a contract between a municipality or county and the Department, whereby the municipality or county provides information to the Department about a person’s failure to appear for a complaint or citation or failure to pay or satisfy a judgment. TEX. TRANSP. CODE § 706.002(a); *see also id.* § 706.001(7) (defining “political subdivision” as a municipality or county). Upon receipt of that information, the Department may deny the person’s driver’s license renewal. *Id.* § 706.004(a). With limited exceptions, a person whose failure to appear or make payment has been reported to the Department “*shall be required* to pay a reimbursement fee of \$10 for each complaint or citation reported.” *Id.* § 706.006(a) (emphasis added). The Department may continue to deny the driver’s license renewal until it receives notice from the political subdivision that certain events occurred that warrant lifting the denial. *See id.* § 706.005. For example, the political subdivision must notify the Department if the person paid the required reimbursement fee and paid the fine and cost owed on an outstanding judgment that served as the basis for the original denial. *See id.*

¹*See* Letter from Steven C. McCraw, Dir., Tex. Dep’t of Pub. Safety, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Sept. 22, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0379KP.pdf> (“Request Letter”).

§ 706.005(a)(4). Once the Department receives notice from the political subdivision that specific events occurred to warrant lifting the denial, the Department “may not continue to deny the renewal of the person’s driver’s license.” *Id.* § 706.005(b)(1).

You explain that Harris County entered into an agreement with the Department to participate in the Failure to Appear Program but terminated that agreement earlier this year. Request Letter at 2. You also explain that Harris County requested that the Department lift all holds issued in connection with the agreement, “regardless of whether the person who failed to appear for a complaint or citation for an offense has paid a reimbursement fee.” *Id.* You question whether a political subdivision such as Harris County may require the Department to lift those holds “if the political subdivision has not met the requirements for sending a clearance notice under section 706.005 or has not collected the reimbursement fee required by section 706.006.” *Id.* at 1.

Subsection 706.006(a) generally requires a political subdivision to collect a reimbursement fee from “a person who fails to appear for a complaint or citation for an offense” any time the complaint or citation has been reported to the Department. TEX. TRANSP. CODE § 706.006(a). That subsection lists four specified reasons why a person is excused from paying the fee:

- (1) the person is acquitted of the charges for which the person failed to appear;
- (2) the charges on which the person failed to appear were dismissed with prejudice by motion of the appropriate prosecuting attorney for lack of evidence;
- (3) the failure to appear report was sent to the department in error;
or
- (4) the case regarding the complaint or citation is closed and the failure to appear report has been destroyed in accordance with the applicable political subdivision’s records retention policy.

Id. Additionally, the person may not be required to pay a reimbursement fee if a court makes a finding that the person is indigent. *Id.* § 706.006(d). Unless a person qualifies for a statutory exception to payment of the fee, the Department “may deny renewal of the driver’s license of a person who does not pay a reimbursement fee due . . . until the fee is paid.” *Id.* § 706.006(c). Cancellation of the contract between the Department and a political subdivision does not release the individual’s obligation to pay and the political subdivision’s obligation to collect the fee if the failure to appear has already been reported to the Department.

Also relevant to your question, subsection 706.005(b) establishes circumstances under which the Department must lift a hold on renewal of the driver’s license:

The department may not continue to deny the renewal of the person’s driver’s license under this chapter after the department receives notice:

- (1) under Subsection (a);
- (2) that the person was acquitted of the charge on which the person failed to appear;
- (3) that the charge on which the person failed to appear was dismissed with prejudice by motion of the appropriate prosecuting attorney for lack of evidence; or
- (4) from the political subdivision that the failure to appear report or court order to pay a fine or cost relating to the person:
 - (A) was sent to the department in error; or
 - (B) has been destroyed in accordance with the political subdivision's records retention policy.

Id. § 706.005(b). Nothing in the language of chapter 706 authorizes a political subdivision to require the Department to lift the previously-requested holds for reasons other than those articulated in subsection 706.005(b). *Id.* Furthermore, specific to your request, subsection 706.005(b) does not authorize a political subdivision to require the Department to lift driver's license renewal holds that the political subdivision previously requested simply because the political subdivision no longer chooses to participate in the program.

S U M M A R Y

Chapter 706 of the Transportation Code authorizes a contract between a municipality or county and the Department of Public Safety, whereby the municipality or county provides information to the Department about a person's failure to appear for a complaint or citation or failure to pay or satisfy a judgment, and the Department denies the renewal of the person's driver's license until certain requirements are met.

Subsection 706.006(a) generally requires a political subdivision to collect a reimbursement fee from a person who fails to appear for a complaint or citation or fails to pay or satisfy a judgment that has been reported to the Department. The Department may deny renewal of the driver's license of a person who does not pay a reimbursement fee due under section 706.006 until the fee is paid.

Nothing in the language of chapter 706 of the Transportation Code authorizes a political subdivision to require the Department to lift previously-requested holds for reasons other than those articulated in subsection 706.005(b).

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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