

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N. LAMAR BLVD. - BOX 4087 - AUSTIN, TEXAS 78773-0001

512 / 424-2000



THOMAS A. DAVIS, JR.
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DAVID McEATHRON
ASST. DIRECTOR

FRANKIE WALLER
ASST. DIRECTOR

November 21, 2000

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John C. Cornyn
Attorney General
Price Daniel, Sr. Bldg., 8th Floor
209 W. 14th Street
Austin, Texas 78701

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Re: Request for Opinion

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NOV 27 2000

RQ-0316-JC
FILE # ML-41768
I.D. # 41768

Dear General Cornyn:

OPINION COMMITTEE

Pursuant to Tex. Gov't Code Ann. § 402.042 (Vernon 1998), I am requesting an opinion relating to the scope of the term "law enforcement or governmental purposes" as used in Tex. Transp. Code Ann. §521.126 (Vernon Supp. 1999). I make this request on behalf of the Public Safety Commission, which asked in its meeting of November 16, 2000, that I make a formal request for an Attorney General Opinion. Also, at the Commission's request, I ask for an expedited opinion due to the importance of properly implementing and enforcing the statute, which was effective September 1, 1999.

Specifically, we ask if "law enforcement or governmental purposes" restricts utilization of the electronically readable information on the back of a driver's license (DL) or identification card (ID) to only law enforcement and governmental agency personnel acting in their official capacity.

The Department of Public Safety (DPS) has been struggling for over a year to determine the meaning of its obligation under Tex. Transp. Code Ann. §521.126(b), which states:

(b) the department shall take necessary steps to ensure that the information is used only for law enforcement or governmental purposes.

Section 521.126 was added to the Transportation Code by HB 571, 76th Legislative Session. Although DPS was aware that other governmental entities, both state and federal, have been encouraging private individuals, businesses, and institutions to purchase devices to read the electronic information on driver licenses and ID's, this utilization did not appear to be entirely consistent with the statutory language.

Based on information from the sponsor of House Bill 571, the Honorable Suzanna Hupp, regarding her intention in filing the bill, the Department published a proposed rule that restricted utilization of the magnetic stripe on driver licenses and ID's to law enforcement and governmental agency personnel acting in their official capacity. [See copy of 25 TexReg 7123 in Attachment 1.]

During the comment period the Department received 236 comments objecting to the proposed rule, and one comment in support. Commenters argued that the reading of the magnetic stripe by a variety of vendors, businesses, and institutions was indeed allowed under the wording of the statute and that the rule restricted legitimate legal use of the magnetic stripe reading devices.

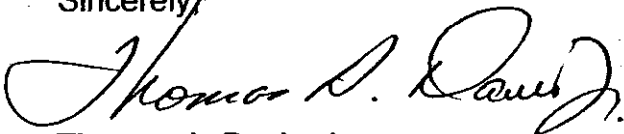
The Public Safety Commission withdrew the proposed rule in order to allow the Commission to reconsider and publicly discuss the options available to it. [See copy of 25 TexReg 10725 in Attachment 2.] The Honorable Suzanna Hupp stated at the November 16, 2000 Public Safety Commission meeting that the intent of the bill was to restrict use of the magnetic stripe to "people with badges."

The Department acknowledges the deference due to the sponsor's interpretation, while also recognizing that the "intent of an individual legislator, even a statute's principal author, is not legislative history controlling the construction to be given a statute." *General Chem. Corp. v. De La Lastra*, 852 S.W.2d 916, 923 (Tex.), cert. denied, 114 S. Ct. 490 (1993). We ask your opinion of the meaning of "law enforcement and governmental purpose" as that term relates to the class of users that may legally obtain and utilize information by swiping the magnetic stripe on the back of the driver license and identification card. We are providing to you in Attachment 3 a list of the reported uses of this electronically readable information, and ask whether these users are in compliance with Tex. Transp. Code Ann. §521.126 (Vernon Supp. 1999). All users claim that their practice of swiping the magnetic stripe allows them to more easily comply with the law governing their business, to more easily detect violations of the law related to their business, or that collection of information contained in the magnetic stripe is required to be collected or verified by governmental entities.

Additional background that may be useful in your review is that, by statute, the information contained on the magnetic stripe is the same information contained on the front of the license, except for a "physical description of the licensee." Tex. Transp. Code Ann. §521.126(a). Currently that physical description consists of only the weight of the licensee/I.D. cardholder.

I respectfully request that you issue a written opinion on these issues.

Sincerely,



Thomas A. Davis, Jr.
Director

TAD:MAC:js

cc: Commissioner James B. Francis, Jr.
Commissioner Robert B. Holt
Commissioner M. Colleen McHugh
State Representative Suzanna Hupp