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AUG 23 2001

OPINION COMMITTEE

RQ-0421-JC

August 17, 2001

Susan Guskey
Opinion Committee Chairperson
Attn: Opinion Committee
P. O. Box 12548
Austin, Texas 78711-2548

FILE # ML-42114-01
I.D. # 42114

REQUEST FOR
ATTORNEY'S GENERAL'S OPINION

ISSUE:

Whether a person who falls asleep while driving and goes off a road has committed the offense of failure to drive in a single lane?

ARGUMENT AND AUTHORITIES

The Texas Transportation Code section 545.060 states in pertinent part:

- (a) An operator on a roadway divided into two or more clearly marked lanes for traffic: (1) shall drive as nearly practical entirely within a single lane; and (2) may not move from the lane unless that movement can be made safely.

A violation of this statute requires a conscious act on the part of the driver to change lanes when such a change cannot safely be done. See dicta in *Lopez v. Hernandez*, 595 S. W. 2d 180 (Tex. Civ. App. 1980). An individual who falls asleep at the wheel cannot be committing a conscious act when his vehicle drifts off the road and the driver cannot be violating this failure to drive in a single lane statute.

SUMMARY

A driver who falls asleep while driving and drifts off the road cannot be committing the offense of Failure to Drive in a Single Lane because such a violation requires a conscious act.

Very truly yours,

A handwritten signature in black ink that reads "Phil Garrett". The signature is written in a cursive, slightly slanted style.

Phil Garrett

PG/bh