

TEXAS HOUSE OF REPRESENTATIVES



COMMITTEE ON HOUSE ADMINISTRATION

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OPINION COMMITTEE

RQ-0426-jc

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FILE # ML-42131-01

I.D. # 42131

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August 28, 2001

Office of the Attorney General
State of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RE: Request for An Opinion Interpreting Whether State Enabling Legislation is Required for Home-Rule City Adoption of Ordinance Decriminalizing the Disregard of a Traffic Control Signal (Red Light Violation) and Authorizing the Use of Automated Enforcement Systems

Dear General Cornyn:

The City of Richardson has requested that my office seek a formal opinion from the Office of the Attorney General.

The City of Richardson would like to know whether:

- (1) State enabling legislation is required in order for the City to adopt local legislation that decriminalizes the disregard of a traffic control signal (red light violation) and which authorizes the use of automated enforcement systems; and whether
- (2) the Texas Constitution prohibits and/or the general laws of this State preempt the City from enacting the enclosed ordinance that decriminalizes the disregard of a traffic control signal (red light violation) and which authorizes the use of automated enforcement systems?

Previous legislative attempts to enact enabling legislation to authorize decriminalization of the disregard of a traffic control signal and the use of automated enforcement systems for traffic violations have been unsuccessful. Many home rule municipalities would like to enact local legislation but are concerned that State enabling legislation is required or that the Texas Constitution prohibits, and/or the general laws of this State preempt such action.

The City of Richardson, as a home-rule municipality, has the full power of self government, and looks to the Texas Constitution and general laws of this State for limitations, and not for grants of power or

35615

TONY GOOLSBY, CHAIRMAN, VILMA LUNA, VICE-CHAIR
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Attorney General Cornyn
August 28, 2001
Page 2

authority. Unless prohibited by Texas Constitution, or the general laws of this State preempt the area of regulation, the City may enact reasonable regulations under its police power for the health, safety and welfare of the citizens. Currently, there is no Texas Constitutional prohibition nor any general law which appear to preempt this area regulation or that would prohibit the City of Richardson from enacting the enclosed ordinance.

Without question the City may currently use automated cameras or other automated systems to aid in the criminal prosecution of red-light violations and other misdemeanor offenses in the municipal court. The use of automated systems in a criminal prosecution gives rise to certain evidentiary problems, and in most cases would be insufficient to convince a judge or jury beyond a reasonable doubt that the accused person was guilty beyond a reasonable doubt of the traffic violation. The City may issue a suspected violator a citation to appear in municipal court, and later issue a warrant of arrest for the suspected violator if that person does not appear in court. However, prior to the issuance of an arrest warrant, the magistrate must be satisfied that probable cause exists for the arrest of that person (i.e. reasonable belief that the suspected violator is the person who committed the violation). The ownership or registration of the motor vehicle to such person is not sufficient to constitute such probable cause. Any person could have been operating the motor vehicle at the time of the alleged violation. This is the precise reason why warrants of arrest are not issued for parking violations when a citation is left on the parked vehicle or mailed to the registered owner.

The use of automated enforcement systems would be adequate if the City is authorized to enact local legislation that decriminalizes the disregard of a traffic control signal (red light violation) making it a civil matter. Enclosed is a proposed ordinance that the City of Richardson would like to enact if your office concludes that no state enabling legislation is required, and that the Texas Constitution does not prohibit and the general laws of this State do not preempt such ordinance. Also enclosed is a legal brief prepared by the City Attorney related to this matter.

Thank you for your prompt attention to this matter. Please contact my office if I may be of further assistance or provide any further information in this matter.

Sincerely,



Tony Goolsby
State Representative
District 102

Enclosure: Richardson Ordinance
Legal Brief

cc: Honorable Gary Slagel

NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P.

Peter G. Smith
Direct (214) 665-3365
E-mail: psmith@njdhs.com

Attorneys & Counselors at Law
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201
(214) 965-9900
Fax (214) 965-0010
E-mail NJDHS@NJDHS.com

H. LOUIS NICHOLS
LAWRENCE W. JACKSON
OF COUNSEL

August 24, 2001

Honorable Tony Goolsby
State Representative
9696 Skillman
Suite 210
Dallas, Texas 75243

RE: *City of Richardson, Texas*

Dear Representative Goolsby:

As you are aware, the undersigned is the City Attorney for the City of Richardson, Texas. In addition, our firm represents several other municipalities in the Dallas/Fort Worth metroplex.

As you know, the City has asked that we solicit your assistance in seeking an opinion from the Texas Attorney General relating to the authority of the City to enact local legislation to decriminalize the disregard of a traffic control signal (red light) and which authorizes the use of an automated system for the civil enforcement. The City of Richardson is a Home-Rule municipality with full power of self government and looks only to the Texas Constitution and the general laws of the State for limitations, and not for grants of power or authority. Unless the Texas Constitution prohibits, or the general laws of the State preempt an area of regulation, the City may enact reasonable regulations under its police power for the health, safety and welfare of the citizens.

Several Home-Rule municipalities have considered the adoption of local legislation to authorize the use of automated enforcement systems for red-light traffic signal violations. In fact, the City of Garland is proceeding with a program for automated enforcement of traffic red-light violations. Previous legislative attempts to enact state authorization for automated enforcement systems have failed. Several municipalities including the City of Richardson would like to enact local legislation to use automated systems for the enforcement of red-light traffic signal violations as civil offense. However, it is unclear whether state enabling legislation is required or whether the State law preempts such legislation.

Some states have adopted such measures and have decriminalized red light traffic signal violation making it a civil matter, and not subject to imprisonment or criminal penalty. Nonpayment of the civil penalty is collected like any other civil judgment and is enforced through drivers license revocation or other similar method. In Texas, Chapter 682 of the Texas Transportation Code presently allows certain municipalities (excluding Richardson) to make

Honorable Tony Goolsby
August 24, 2001
Page -2-

stopping and parking violations a civil offense. In addition, there is authority for regional tollway authorities to use automated systems for the enforcement of the payment of toll fees.


Accordingly, we seek your assistance in requesting the Texas Attorney General to issue an opinion as to whether: (1) the City of Richardson, as a home-rule municipality, may enact local legislation that decriminalizes the disregard of a traffic control signal (red light violation) and which authorizes the use of automated enforcement systems; (2) State enabling legislation is required in order for the City to enact the enclosed ordinance; and whether (3) the Texas Constitution prohibits, and/or the general laws of this State preempt the City from enacting the enclosed ordinance?

We are confident that you will agree that these matters are worthy of consideration and resolution by the Texas Attorney General. If necessary, the City can provide additional information as to the need, success and value of implementation of such system. For your convenience, we have enclosed a proposed letter to the Texas Attorney General requesting an opinion on the enclosed diskette. Also, we have enclosed our legal brief relating to this matter to be included in your submission. Finally, we are available to provide any additional briefing, research or other assistance that you may require in seeking such opinion.

Thank you for your attention to this matter.

Very truly yours,

NICHOLS, JACKSON, DILLARD,
HAGER & SMITH, L.L.P.

By: 
Peter G. Smith

PGS/ttl
Enclosure

cc: Honorable Mayor Gary Slagel
Bill Keffler
Honorable Judge Ray Noah
Chief Kenneth Yarbrough

35614

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