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OPINION COMMITTEE

November 27, 2001

RQ-0471-JC

FILE # ML-42301-01

I.D. # 042301

Honorable John Cornyn
Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Attention: opinion committee.

Re: Request for opinion regarding the potential effect of Senate Bill 220
on traffic enforcement.

Dear General Cornyn:

I request that you issue a formal written opinion concerning the appropriate construction of the portion of the 77th Legislature's Senate Bill 220 which amended section 644.101 of the Transportation Code to include the following provision:

(d) A sheriff, a deputy sheriff, or any peace officer that does not attend continuing education courses on the enforcement of traffic and highway laws and on the use of radar equipment as prescribed by Subchapter F, Chapter 1701, Occupations Code, shall not enforce traffic and highway laws.

As discussed in more detail in the enclosed brief, it does not appear that Subchapter F of Chapter 1701 of the Occupations Code currently includes any provisions which "prescribe" the development or presentation of "continuing education courses on the enforcement of traffic and highway laws and on the use of radar equipment." Therefore, I request your opinion on the following issues raised by the promulgation of this statute:

Honorable John Cornyn
Attorney General

Page 2

1. Does subsection 644.101(d) of the Transportation Code currently require peace officers to take any continuing education courses concerning traffic and highway laws, in light of the absence of any provisions in the Occupations Code which specifically "prescribe" such training?

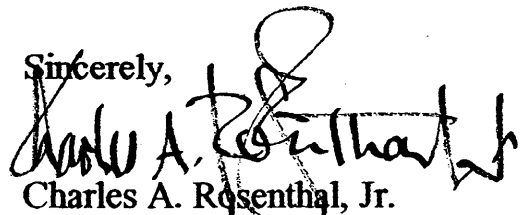
2. If § 644.101(d) of the Transportation Code does currently require that peace officers attend continuing education courses, is it applicable only to those officers who conduct commercial vehicle inspections pursuant to the remainder of that section of the Transportation Code?

3. If § 644.101(d) of the Transportation Code does currently require that peace officers attend continuing education courses, are they permitted to continue to engage in enforcement of the traffic and highway laws prior to attending the prescribed courses, so long as they satisfy the requirement before expiration of the two-year period within which they must meet their other continuing education requirements?

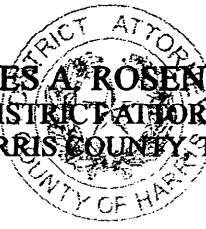
4. If § 644.101(d) of the Transportation Code does currently require that peace officers attend continuing education courses, would a failure to comply with its provisions affect the validity of a traffic citation or complaint, or require suppression of evidence obtained during a traffic stop pursuant to article 38.23 of the Code of Criminal Procedure?

The promulgation of § 644.101(d) could result in widespread confusion regarding the consequences of a failure to obtain the "prescribed" training, and it is hoped that prompt dissemination of an attorney general's opinion will serve to allay that confusion and minimize any impact upon public safety. Thank you for your assistance in this regard.

Sincerely,


Charles A. Rosenthal, Jr.
District Attorney

CHARLES A. ROSENTHAL, JR.
DISTRICT ATTORNEY
HARRIS COUNTY, TEXAS



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Honorable John Cornyn
Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Attention: opinion committee.

Re: Supporting brief—request for opinion regarding the potential effect
of Senate Bill 220 on traffic enforcement.

Dear General Cornyn:

The following memorandum of law is offered for your consideration in connection with the enclosed request for a formal written opinion regarding the potential effect of the recent Legislature's Senate Bill 220 upon police officers' authority to enforce traffic laws.

a. Passage of Senate Bill 220.

The initial introduced version of Senate Bill 220, authored by Senator Florence Shapiro, was primarily concerned with weight restrictions for commercial vehicles, but also included an amendment to Chapter 644 of the Transportation Code to permit sheriff's deputies to become certified to conduct commercial motor vehicle safety inspections under that chapter.

The bill was passed by the Senate and referred to the House Transportation Committee, which favorably reported to the House a committee substitute containing (in section 11 of the substitute bill) an amendment to § 644.101 of the Transportation Code, which would impose the following limitation upon peace officers' authority to enforce traffic and highway laws:

(d) A sheriff, a deputy sheriff, or any peace officer that does not attend continuing education courses on the enforcement of traffic and highway laws and on the use of radar equipment as prescribed by Subchapter F, Chapter 1701, Occupations Code, shall not enforce traffic and highway laws.

Honorable John Cornyn
Attorney General

Page 2

The analysis for the committee substitute noted only in passing that the substitute bill differed from the original senate bill in that the substitute “provides that the sheriff or deputy sheriff of a county of 2.2 million or more is eligible to apply for certification to enforce commercial motor vehicle safety standards, and *requires that a peace officer who does not attend certain courses not enforce traffic and highway laws (Sec. 644.101)*” (emphasis supplied).

After several amendments to other portions of the bill, the house committee substitute was approved by both houses of the Legislature, and the enrolled bill approved by the governor did contain the amendment to § 644.101 of the Transportation Code set out above. The bill analysis for the enrolled bill noted only that it contained a provision which “[p]rohibits a sheriff, a deputy sheriff, or any peace officer that does not attend continuing education courses on the enforcement of traffic and highway laws and on the use of radar equipment as prescribed by Chapter 1701F, Occupations Code, from enforcing traffic and highway laws.”

While the amendment requires that peace officers enforcing traffic and highway laws attend continuing education courses “as prescribed by Subchapter F, Chapter 1701, Occupations Code,” that subchapter of chapter 1701 of the Occupations Code does not appear to contain *any* corresponding provisions prescribing “continuing education courses on the enforcement of traffic and highway laws and on the use of radar equipment.”

Prior to amendment by the 77th Legislature, subchapter F of chapter 1701 provided that the Texas Commission on Law Enforcement Officer Standards and Education was to “require courses and programs to provide training” in investigation of cases involving child abuse, family violence, sexual assault and sex offender characteristics (§ 1701.253), and in weapons proficiency (§ 1701.257); but it did not contain any provisions requiring establishment of training programs which pertained to enforcement of traffic and highway laws.

In its House Bill 2585, the 77th Legislature amended § 1701.253 to require that peace officers undergo training in the laws relating to operation of motorcycles, “as part of the minimum curriculum requirements relating to the vehicle and traffic laws of this state,” but it does not seem to have otherwise established any “minimum curriculum requirements” for those topics.

Other recent amendments required peace officers to undergo continuing education with regard to racial profiling (Senate Bill 1074), victims’ rights (House

Honorable John Cornyn
Attorney General

Page 3

Bill 1572) and asset forfeiture (House Bill 2696), but it does not appear that any amendment served to impose any particular requirements that peace officers' undergo a specified amount of training with regard to traffic and highway safety laws.

Thus it appears that the reference in Senate Bill 220 to the Occupations Code requirements for continuing education on traffic safety laws is essentially meaningless, since that Code does not seem to "prescribe" the formulation of any "continuing education courses on the enforcement of traffic and highway laws and on the use of radar equipment."

b. Construction of § 644.101(d).

Since § 644.101(d) of the Transportation Code (as recently promulgated by Senate Bill 220) only requires police to undergo the training "prescribed" by the specified subchapter of the Occupations Code, and that subchapter contains no corresponding prescription, § 644.101(d) should not be construed as requiring that peace officers take *any* particular amount of continuing education courses in order to remain qualified to enforce traffic and highway safety statutes.

"When one statute references another statute, one must look to the referenced statute to understand the referencing statute." *In re R. J. J.*, 959 S.W.2d 185, 186 (Tex. 1998). In this situation, the "referenced statute" does not exist. The applicability of the referencing statute in the Transportation Code was, in effect, conditioned upon passage of a corresponding legislative amendment of the Occupations Code. Since the Occupations Code was not amended to include requirements for continuing education regarding traffic safety, the condition has not been met, and § 644.101(d) should not be deemed effective until some future Legislature makes the necessary additions to the Occupations Code provisions pertaining to peace officer training curriculum requirements.

This situation is somewhat analogous to one in which the Legislature has made a statutory change conditional upon the passage of a corresponding change to the Texas Constitution. *See, e.g. Clewis v. State*, 922 S.W.2d 126, 161-62 (Tex. Crim. App. 1996) (White, J., dissenting) (discussing a 1989 amendment of article 37.07 of the Code of Criminal Procedure that was conditioned upon passage of a corresponding constitutional amendment). The requirements of § 644.101(d) were effectively conditioned upon the subsequent amendment of chapter 1701 of the

Honorable John Cornyn
Attorney General

Page 4

Occupations Code in order to prescribe requirements for peace officer training “on the enforcement of traffic and highway laws and on the use of radar equipment.” Since the corresponding amendment of the Occupations Code did not actually occur, § 644.101(d) should not be viewed as requiring any particular amount of continuing education regarding the specified topics.

The situation is also roughly analogous to one in which a statute refers to or incorporates another statutory provision which has been found to be unconstitutional. For instance, in *State v. Matyastik*, 811 S.W.2d 102, 104 (Tex. Crim. App. 1991), the Court of Criminal Appeals held that a portion of a statute which referred to and incorporated an unconstitutional statute was also invalid because it could not “be executed or have any effect without utilizing the [unconstitutional] provisions” of another section. *Accord, Lyles v. State*, 850 S.W.2d 497, 499-500 (Tex. Crim. App. 1993). Section 644.101(d) similarly cannot be executed or have any effect until the Legislature has “prescribed” the requirements for traffic safety law enforcement training.

Any other construction of § 644.101(d) would violate the rule that a legislative enactment will not be construed in a manner which would result in “absurd consequences that the Legislature could not *possibly* have intended.” *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991) (emphasis in original).

In construing a statute, “its subject matter, reason and effect must be looked to, and when literal enforcement would lead to consequences which the Legislature could not have contemplated, courts are bound to presume that such consequences were not intended and adopt a construction which will promote the purpose for which the legislation was passed.” *Faulk v. State*, 608 S.W.2d 625, 630 (Tex. Crim. App. 1980). It must be presumed that “a just and reasonable result [was] intended and that the public interest is to be favored over any private interest.” *Harris County District Attorney’s Office v. J.T.S.*, 807 S.W.2d 572, 572 (Tex. 1991).

If § 644.101(d) is construed to require that peace officers cease any traffic enforcement activity until they have obtained the training required by a non-existent provision of the Occupations Code, the consequences could be disastrous for the citizens of this State. Mass dismissals of traffic citations and complaints would lead to traffic anarchy when it is learned that the police were statutorily precluded from detaining motorists and writing citations. Peace officers would be unable to enforce the driving while intoxicated statutes, if deprived of the ability to investigate violations of the traffic laws, and the death toll from the scourge of

Honorable John Cornyn
Attorney General

Page 5

drunken driving would drastically increase. In addition, criminal defense attorneys would undoubtedly argue for the suppression of evidence of a variety of other serious crimes, on grounds that the evidence was the unlawful product of

The Legislature could not possibly have intended these absurd consequences. The only rational construction of the statute is one in which it is viewed as having been conditioned upon passage of appropriate amendments to the Occupations Code, which have not yet occurred.

c. Applicability of § 644.101(d) to certain peace officers.

If § 644.101(d) is found to impose some current training obligation upon peace officers, despite the lack of a corresponding amendment of chapter 1701 of the Occupations Code, it should be viewed in the context of its placement among statutes which pertain exclusively to commercial vehicle safety inspections, and it should be construed to apply only to peace officers engaged in those inspections.

A statutory provision must be construed within the context of the “entire statute of which it is a part,” *Continental Casualty Insurance Co. v. Functional Restoration Associates*, 19 S.W.3d 393, 398 (Tex. 2000), as well as the context of “the entire statutory scheme.” *Texas Workers’ Compensation Insurance Fund v. Del Industries, Inc.*, 35 S.W.3d 591, 593 (Tex. 2000). “Only in the context of the remainder of the statute can the true meaning of a single provision be made clear.” *Bridgestone/Firestone, Inc. v. Glyn-Jones*, 878 S.W.2d 132, 133 (Tex. 1994).

Prior to the passage of Senate Bill 220, chapter 644 of the Transportation Code dealt exclusively with enforcement of safety standards for commercial motor vehicles, and § 644.101 specifically pertained to certification of peace officers to conduct safety inspections of commercial vehicles.

In its initial “introduced” form, Senate Bill 220 dealt primarily with commercial vehicle weight limits, and section 7 of the bill—the only portion of the bill which pertained to peace officers—only operated to permit sheriff’s deputies, as well as municipal peace officers, to obtain the certification required to detain commercial vehicles for safety inspections.

While section 11(d) of the engrossed and approved version of the bill eventually contained broad and ambiguous language which could be construed as applying to *all* peace officers, that provision should be read in the context of the entire legislative act and the chapter of the Transportation Code within which it

Honorable John Cornyn
Attorney General

Page 6

was placed. Since a statute dealing with commercial vehicle safety inspections was amended by a bill which dealt almost exclusively with commercial vehicle issues, the amendment should be construed to apply only to peace officers who seek to obtain certification to engage in the detention and inspection of commercial vehicles under the other portions of § 644.101.

Again, statutes should be construed in a manner which avoids absurd consequences the Legislature could not have intended. *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991). If § 644.101(d) is taken out of the context of commercial vehicle inspections, the police will be incapable of sustaining an adequate level of traffic safety law enforcement, to the obvious detriment of public safety.

d. Time period for compliance with § 644.101(d).

There is an additional ambiguity in § 644.101(d) with regard to the time period within which peace officers would be required to comply with the new training requirements.

The provision stating that peace officers who have not undergone the required training “shall not enforce traffic and highway laws” could be construed to prohibit all officers from engaging in any traffic law enforcement activities *until* they undergo the required training.

On the other hand, peace officers are currently required to obtain the remainder of their continuing education within a two-year period, pursuant to § 1701.351(a) of the Occupations Code, as amended by House Bill 2881 of the 77th Legislature:

(a) Each peace officer shall complete at least 40 hours of continuing education programs once every 24 months. The commission may suspend the license of a peace officer who fails to comply with this requirement.

Section 1701.351(a) thus allows peace officers a two-year period of time in which they must satisfy their continuing education requirements. Section 644.101(d) of the Transportation Code should be read in conjunction with § 1701.351, and if the former provision is effective at all, it should be construed to

Honorable John Cornyn
Attorney General

Page 7

require police officers to obtain the requisite training in “enforcement of traffic and highway laws and on the use of radar equipment” within the same two-year period in which they are required to obtain the rest of their in-service training.

If a general provision conflicts with a special provision, they should be construed, if possible, so that effect is given to both; and when one statute deals with a subject in comprehensive terms, and another deals with a portion of the same subject in a more particular way, the specific will prevail. *Melton v. State*, 993 S.W.2d 95, 99 (Tex. 1999); TEX. GOV'T CODE ANN. § 311.026 (Vernon 1995). Sections 644.101(d) and 1701.351(a) can easily be reconciled, and should be construed to require that peace officers obtain the continuing education described in § 644.101(d) at any time within the two-year period allowed by § 1701.351(a).

e. Art. 38.23, Code of Criminal Procedure.

The Texas statutory exclusionary rule (article 38.23 of the Code of Criminal Procedure) is not applicable in cases involving “statutory violations unrelated to the purpose of the exclusionary rule.” *Lane v. State*, 951 S.W.2d 242, 243 (Tex. App.—Austin 1997, no pet.). Police failure to conform to statutory requirements does not require suppression of evidence thereafter obtained, if the statutory violation is unrelated to the purpose of the exclusionary rule. *See, e.g., Bachik v. State*, 30 S.W.3d 549, 552-53 (Tex. App.—Fort Worth 2000, pet. ref'd) (officer's failure to notify local law enforcement authorities after arrest outside officer's geographic jurisdiction, as required by art. 14.03(d), Code of Criminal Procedure, did not require suppression of evidence); *Stockton v. State*, 756 S.W.2d 873, 874 (Tex. App.—Austin 1988, no pet.) (officer's violation of Education Code provisions during undercover operation at school did not require suppression of evidence).

The purpose of the newly enacted § 644.101(d) apparently was to ensure that police officers were kept abreast of legislative developments relating to traffic and vehicle safety laws. It is not a statute governing the manner in which police obtain evidence, and is entirely unrelated to the purposes of article 38.23, the Texas statutory exclusionary rule. A failure to comply with the statute, moreover, would not implicate a citizen's right to be free from unreasonable search or seizure, or call into question the validity of a criminal complaint filed against the citizen.

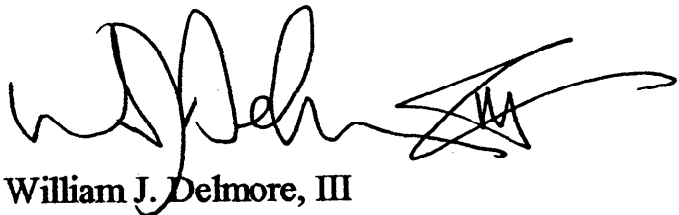
Honorable John Cornyn
Attorney General

Page 8

Therefore, an officer's failure to take continuing education classes sufficient to satisfy § 644.101(d) should not require suppression of evidence obtained by the officer as the result of traffic law enforcement activities, and should not affect the validity of any citations or complaints which result from the officer's enforcement of Texas traffic and vehicle safety statutes.

Sincerely,

Charles A. Rosenthal, Jr.
District Attorney

A handwritten signature in black ink, appearing to read 'W. J. Delmore, III', with a long horizontal flourish extending to the right.

William J. Delmore, III
Assistant District Attorney
(713) 755-5826