

TEXAS DEPARTMENT OF PUBLIC SAFETY

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RQ-0588-JC OPINION COMMITTEE

FILE # ML-42746-02

I.D. # 42746

The Honorable John Cornyn
Attorney General of Texas
Opinion Committee
209 W. 14th Street
Austin, Texas 78711-2548

Certified Mail
Return Receipt Requested
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Re: Salvage Certificates issued by the Texas Department of Transportation

Dear General Cornyn:

This letter is a request for an opinion under Texas Government Code Section 402.042. Specifically, the Texas Department of Public Safety (DPS) requests an opinion addressing this question: Does DPS have the authority to inspect businesses that deal in "salvage certificates"?

STATUTORY HISTORY AND BACKGROUND

Prior to being repealed by the 74th Legislature, state law, as it applied to certificates of title for destroyed, junked or otherwise damaged motor vehicles that had lost their character as a motor vehicle, was embodied in Vernon's Texas Civil Statutes, Article 6687-1, Section 37.¹ In essence, the law stated that the owner of such a vehicle had to surrender the regular certificate of title to the Texas Department of Transportation (TxDOT). If the vehicle is rebuilt, the owner would have to first procure a new regular certificate of title before it could be used on the highway or sold. To obtain this new title, the owner would have to submit an affidavit containing specific information regarding the rebuilding process and TxDOT would have to be satisfied as to the truthfulness and correctness of the sworn information.² The Texas Legislature repealed Section

¹ Act of 1939, 46th Leg., R.S., 1939 Tex. Gen. Laws 602, transferred by Act of May 24, 1973, 73rd Leg., R.S., ch. 399, §5, 1973 Tex. Gen. Laws 883, 995, repealed by Act of September 1, 1995, 74th Leg., R.S., ch. 394, §3, 1995 Tex. Gen. Laws 2940, 2946.

² *Id.*

37 in 1995, and added Section 37A. This section was in turn repealed by the 75th Legislature in 1997, and codified into its current form in Chapter 501 of the Texas Transportation Code.³

Under current statute, the Texas Transportation Code Chapter 501 refers to three distinct types of vehicle title. The first category is a regular certificate of title, as is held for vehicles in normal condition. TEX. TRANSP. CODE ANN. §§ 501.021, 501.022 (Vernon Supp. 2002). The second category is defined as a “salvage motor vehicle certificate of title” which involves late model vehicles which have sustained damage that is not less than 75% or more than 94% of the value of the vehicle in undamaged condition. TEX. TRANSP. CODE ANN. §§ 501.0911(a)(6) & (14) (Vernon 1999). The third category is defined as a “nonrepairable motor vehicle certificate of title” and recognizes late model vehicles that have been damaged to a degree equal to or exceeding 95% of the undamaged condition value. TEX. TRANSP. CODE ANN. §§ 501.0911(a)(8)&(9) (Vernon 1999). Upon damage to a vehicle in the percentage of 75% or more, the person owning the vehicle is required to surrender the regular title to TxDOT and in return receive the appropriate salvage or nonrepairable title. TEX. TRANSP. CODE ANN. Chapter 501, Subchapter E (Vernon 1999 & Supp. 2002). Upon the rehabilitation of the vehicle, the owner must apply for a new regular title before such vehicle could again be used on Texas Highways. TEX. TRANSP. CODE ANN. §§ 501.0921, 501.0922, 501.0925, 501.0927 (Vernon 1999).

LEGAL ANALYSIS

At issue is the status of a late model vehicle that sustains damage that is determined to be less than 75% of the value. The understanding of DPS is that TxDOT issues a “salvage certificate” for these vehicles, and obtains the surrender of the regular title.⁴ Such action removes the vehicle from the title categories described above, as it then carries no title whatsoever. After the vehicle is rehabilitated, an owner having received this salvage certificate may apply for the re-issuance of a regular title.

The relevant rule of statutory construction is that every word utilized must be presumed to have been used for a purpose, and every word excluded must be presumed to have been excluded by the Legislature for a purpose. *Cameron v. Terrell & Garrett*, 618 S.W.2d 535, 540 (Tex. 1981). Further, an agency may not exercise a new power or a power contrary to statute on the theory that such power is expedient for administrative purposes. *Public Util. Comm'n v. City Pub. Serv. Bd.*, 53 S.W.3d 310, 316 (Tex. 2001).

The Texas Legislature defined three categories of title for motor vehicles: a regular title, a salvage motor vehicle title and a nonrepairable motor vehicle title, to the exclusion of any other categories. Nevertheless, TxDOT has created this fourth category, undefined by statute, and routinely issues these documents.⁵ The purported reason it is favored by those who utilize the

³ Act of September 1, 1995, 74th Leg., R.S., ch. 394, §1, 1995 Tex. Gen. Laws 2940, repealed by Act of September 1, 1997, 75th Leg., R.S., ch. 165 §30.34, 1997 Tex. Gen. Laws 327, 608.

⁴ Attachment #1: Salvage Certificate as supplied to the public on the TxDOT website.

⁵ Attachment #2: Statistics for year 2001 indicating 166,694 “Salvage Certificates” issued by TxDOT.

salvage certificate method is that it circumvents the inspection requirement, and most importantly, the administrative costs that DPS charges for that inspection,⁶ thus reducing overhead. As a result, the salvage certificate has been used consistently by businesses as an alternative despite DPS concerns.⁷ In fact, the Motor Vehicle Theft Service of DPS advises that there are dealers and businesses that traffic exclusively in these salvage certificates.

The Texas Legislature, recognizing the potential for abuse and criminal activity within the used motor vehicle industry, inserted the requirement that vehicles issued a salvage title or a nonrepairable title must submit to an inspection by DPS prior to that vehicle being re-issued a post-rehabilitation regular title. TEX. TRANSP. CODE ANN. §§ 501.0922, 501.0927 (Vernon 1999).⁸ It is a reasonable inference that the Legislature intended for DPS to monitor the industry through such inspection and enforcement. As the Legislature did not define a "salvage certificate" in the relevant statutes, however, DPS must deduce that such vehicles are excluded from the inspection regulations that exist for titled vehicles. Further, DPS concludes that to enforce inspection upon these types of vehicles would be tantamount to the exercise of a new power for the sake of expediency, but without the necessary statutory backing. Therefore, DPS takes the position that it lacks the authority to inspect a vehicle holding a salvage certificate, and finds itself in the position of being unable to enforce in an industry it perceives the Legislature intended to be regulated.

In view of the issues stated herein, DPS seeks specific guidance from the state's attorney on the authority to inspect such businesses dealing with "salvage certificates" in keeping with the apparent expectations of the Texas Legislature. DPS respectfully reserves the right to file additional briefing pursuant to the Office of Attorney General's briefing schedule.

Thank you for your attention to this matter.

Sincerely,



Thomas A. Davis
Director

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⁶ TEX. TRANSP. CODE ANN. §§ 501.0922, 501.0927 (Vernon 1999).

⁷ Attachment #3: Memorandum and letters which document prior discussions regarding salvage certificates.

⁸ A motor vehicle under a regular title is also subject to law enforcement action via the Texas Penal Code. *E.g.*, TEX. PEN. CODE ANN. §§ 31.03 (Vernon Supp. 2002), 31.11 (Vernon Supp. 2002), 32.34 (Vernon 1999), 37.10 (Vernon Supp. 2002).