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OPEN RECORDS DIVISION

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RQ-0095-GA

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

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OPINION COMMITTEE

re: Request for Opinion regarding Advertising on County owned Vehicles Donated by local Businesses.

To the Honorable Attorney General Abbott:

This is to request an opinion concerning the permissibility of placing decals, trademarks, or logos of local businesses on the rear quarter panel and/or rear trunk lid of county owned vehicles purchased with funds donated by those businesses.

FACTS

The Smith County Sheriff J.B. Smith has proposed a policy for Smith County in which local business entities would be allowed to donate funds to the County for the purchase of law enforcement vehicles in exchange for placement of advertisements for their business on the rear sections of those vehicles. Under this program, once a local business makes a donation for the purchase of a "Police Package Vehicle" for the use of the Sheriff's Office, Smith County would purchase a vehicle according to the normal bidding process for county purchases. The County would then imprint the business' decal, logo, or trademark on the vehicle for a period not less than three years. At the end of the three year period, Smith County would be free to remove the advertisements with no further obligations to the donor. However, should the vehicle be wrecked or otherwise taken out of service prior to the expiration of the three year period, Smith County would be obligated to identically mark a replacement vehicle for the remainder of the three year period.

The advertisements to be placed on the vehicles would be limited in size and placement by standards established by County policy. Each decal, logo, or trademark could be no larger than two feet wide

and two feet high for placement on the rear quarter panels and no larger than three feet wide and three feet wide for placement on the rear trunk lid/bumper of the vehicle. Form and substance of the advertisements would be subject to the approval of the Sheriff's office. Donor businesses would choose from three placement options including either of the rear quarter panels, the rear trunk lid/bumper, or all three locations, with no more than one advertisement allowed per location. *See attached photographs.* However, the possibility of as many as three separate donor advertisements would exist should each location be claimed by different donors. Additionally, the advertisements would not be allowed to cover, obliterate, or conceal any law enforcement markings on the vehicle. Each vehicle would be clearly marked in accordance with Texas Transportation Code §721.004 as a Smith County Sheriff's Office vehicle with all law enforcement insignia currently used by Smith County..

ANALYSIS

The Smith County Criminal District Attorney's Office has reviewed the available authority as well as research provided by a local law firm and reached the conclusion that advertisement on county owned vehicles is not allowed under Texas Law. However, there is very little authority available regarding the issue of advertisement on county property or inscriptions which may be placed on county vehicles. For this reason, the Smith County Sheriff has requested that an opinion be sought from the Attorney General on these issues.

I. INSCRIPTIONS ALLOWED TO BE PLACED ON COUNTY OWNED VEHICLES

The Texas Attorney General's Office addressed the issue of inscriptions which are allowed to be placed upon county owned vehicles in Letter Opinion 97-112. *Tex. Atty. Gen. LO 97-112.* In reaching the conclusion that names of elected officials may not be placed upon county vehicles, the Attorney General analyzed the requirements of Texas Transportation Code Chapter 721. In particular, the one page letter opinion interpreted Section 721.004 of the Texas Transportation Code.

Section 721.004 establishes certain required inscriptions to be placed upon county owned vehicles including the name of the county and the title of the department or office having custody of the vehicle. Letter Opinion 97-112 found these required inscriptions to be an exhaustive list of permissible inscriptions that may be placed upon county owned vehicles. This conclusion presupposes that the legislature intended that no other embellishment be allowed on county vehicles. In reaching this conclusion, the Attorney General seems to insert the word "only" as a modifier of the required inscriptions. This appears to be an incorrect interpretation of the language of section 721.004. To quote the opinion, "It is a fundamental rule of statutory construction that effect and meaning be given to each and every sentence, clause, phrase, and word." This means interpretation of the plain

language of a statute without inserting omitted words or phrases to the statute.

The plain language of Section 721.004 suggests that the required inscriptions are minimum standards for identification of county vehicles and not an exhaustive list. Indeed, many governmental vehicles have inscriptions and writing that include more than the mere name of the municipality or county and the department title requirements of Section 721.004. Municipal and county law enforcement and emergency vehicles routinely include such items as 911 emergency emblems, crime stoppers decals, and vehicle numbers on the vehicles. These items are not specifically authorized by the statute, but are we to assume that the legislature intended to classify these informative inscriptions to be impermissible? Similarly to Section 721.004, Transportation Code §721.002, prescribes the inscriptions placed upon "state-owned" motor vehicles and calls for the inscription of the word "Texas" and the title of the agency having custody of the vehicle to be printed on each side of the vehicle. Texas Department of Public Safety vehicles are currently marked with "State Trooper" on each side and the rear trunk portions of the vehicle. Is this impermissible since the statute does not specifically authorize such wording? If not, some greater criteria than those found in Chapter 721 must exist for determination of permissible inscriptions on municipal and county vehicles.

In my opinion, the answer to permissibility of inscriptions lies with the nature of the proposed inscriptions. Informative inscriptions such as 911 emblems and crime stopper decals aid members of the public in reporting emergencies and criminal violations. Vehicle number inscriptions provide a means of identifying particular vehicles for reporting purposes. Indeed, the inscription of "state trooper" assists individuals in identification of Department of Public Safety vehicles. Further, identification markings such as the Great Seal of Texas or a sheriff's star would similarly communicate the use and governmental ownership of the vehicle. Therefore, these inscriptions all provide a public purpose or function to the municipality or county. Private advertisements, on the other hand, benefit only the advertiser and have a strictly private purpose. Because the advertisements would have no public purpose, governmental bodies would be prohibited from using county property to display them.

II. PRIVATE ADVERTISEMENT ON VEHICLES RESTRICTED BY ARTICLE III §52.

Under the above outlined program, private entities would be, in effect, leasing advertising space on county vehicles. While I have found no Texas law which specifically prohibits leasing of county owned property for advertising purposes, I believe that this particular type of lease would violate Article III § 52 of the Texas Constitution since a significant function of the county owned vehicle would become advertisement for the donor. Unlike a stationary billboard or piece of real property, a vehicle is mobile and requires a driver, fuel, tires, and maintenance in order to function properly.

All of these things require the expenditure of county funds. The county would therefore be obligated to expend those funds necessary to operate a particular vehicle for the benefit of an advertiser. An even more egregious violation would involve a situation in which all available lease space on the county's vehicles have been contracted and a major accident or break down occurs with a vehicle. The county would then be forced by contractual obligation to use public funds to repair or replace the vehicle regardless of the immediate needs or resources of the county. This would require the use of public funds for the specific benefit of the private advertiser and a violation of Article III § 52 of the Texas Constitution.

Further, contractual obligations of advertising may limit the use of the particular vehicle for county purposes. For example, an advertiser may seek to have a particular vehicle carrying his advertisement operate only in a particular section of the county or at a particular time. Clearly, advertising on a vehicle used predominately at night when visibility is low would be much less attractive to donors than advertising on a vehicle that operates during the day. Another scenario would include a donor entity located in a small outlying community seeking to influence the use of "their" vehicle outside the local business area. And while these influences may be minimal or within the parameters established by the sheriff's office, they would still improperly effect the use of public property. Therefore, the county's acquiescence to even subtle influences in the use of county resources to the benefit of a private entity would be a violation of Article III § 52 of the Texas Constitution.

Another issue involved in leasing advertising space on emergency vehicles is the effect such markings may have upon the citizens being confronted by law enforcement officials. In a recent Ohio Attorney General's Opinion, the issue of corporate advertising on sheriff vehicles was addressed. *See Ohio Op. Atty. Gen No. 2003-008, 2003 WL 1086371 (Ohio A.G.)*. In this opinion, the Ohio Attorney General quoted an Ohio Supreme Court case emphasizing the need for distinctive marking of law enforcement vehicles. In that case, the Court states; "it requires little imagination to contemplate the unfortunate consequences should a frightened motorist believe that he [or she] was being forced off the road by a stranger. The General Assembly sought to avoid such mischief by requiring police officers on traffic duty to be identified clearly." *State v. Heins*, 72 Ohio St. 3d 504, 651 N.E.2d 933 (1995). While Ohio law regarding marking of law enforcement vehicles is somewhat more restrictive than the general Texas statute governing all county vehicles, the principal is essentially the same. The Texas Legislature, in prescribing certain inscriptions to be placed on county vehicles, sought to avoid confusion by citizens encountering public vehicles. This is illustrated by the requirement found in Transportation Code § 721.004 that the inscribed lettering be sufficient in color and size to be "plainly legible at a distance of no less than 100 feet." Nevertheless, the Legislature did not specifically prohibit additional markings that do not interfere with the required inscriptions. On the

other hand, adding large advertisements to the body of the county vehicle increases the likelihood that confusion will occur, thereby defeating the intent of the legislature.

SUMMARY

Texas Transportation Code § 721.004 requires certain inscriptions to be placed on county or municipal-owned vehicles and that those inscriptions be sufficient to identify the vehicle as under the control of a public entity. This is especially true for law enforcement vehicle due to the dangerousness of law enforcement duties. The public at large and law enforcement officer alike face a significantly increased risk of peril should confusion in identification of law enforcement vehicles occur. This statute, however, does not mandate that no other inscriptions may be permissibly placed upon the vehicle. The Texas Constitution requires that governmental bodies may not expend public funds except to meet some public purpose. Inscriptions such as 911 emergency emblems, crime stopper decals, and vehicle identification numbers serve such a public purpose in that the public is informed of potentially vital information. Further these inscriptions do nothing to detract from the recognition of the vehicle as under the control of a public entity. In fact, they tend to enhance the likelihood of recognition of such vehicles. Private advertisements do not serve such a public purpose and would tend to increase confusion regarding recognition of public vehicles. Therefore, a county sheriff may not offer to lease private advertising space on sheriff department vehicles. Likewise, a county may not accept a donation of funds for the purchase of county owned vehicles under a condition that private advertising space would be granted to the donor for any length of time.

The Smith County Criminal District Attorney's Office has submitted the above opinion to the Smith County Sheriff regarding the issue of advertising on county vehicles. However, since the Texas Attorney General has not issued an opinion directly on point regarding this issue, the Sheriff has asked that we seek an opinion from your office at this time.

Sincerely,

Jack Skeen Jr.
Smith County Criminal District Attorney

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