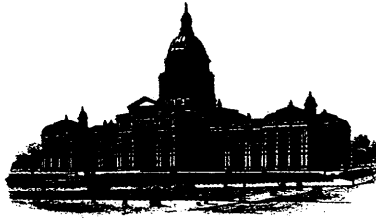


TEXAS HOUSE OF REPRESENTATIVES

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MIKE KRUSEE

CHAIRMAN, HOUSE COMMITTEE ON TRANSPORTATION

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OPINION COMMITTEE

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December, 2003

RQ-0143-GA

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OPEN RECORDS DIVISION

The Honorable Gregg Abbott
Office of the Attorney General
Attn: Opinions Department
209 West 14th Street
Austin, Texas 78701

FILE # ML-43372-03
I.D. # 43372

Dear Attorney General Abbott:

I am writing this letter to request your opinion with respect to whether certain legislation recently enacted by the Texas Legislature affects the ability of the Port of Houston Authority (the "Port Authority") to utilize driver's licenses as part of its security procedures to control access to its terminals. The legislation is set forth in Senate Bill No. 1445, passed by the Texas Legislature in the 2003 Regular Session, which by its terms amends Section 521.126 of the Transportation Code.

In summary, the Port Authority proposes, as part of its federally-mandated security plan, to require that visitors to its facilities who do not possess a Port Authority-issued identification badge present their state-issued driver's licenses at the Port Authority's gate as a precondition to entry. The driver's license will be swiped by a security guard through an electronic reader so that the digital information on the license's magnetic stripe or barcode will be read by the reader and transported to a computer database. The Port Authority's Police Officers (all of whom are "peace officers" under Section 521.226(d) of the new statute) will have access to and may use the database information solely for law enforcement and security purposes. I believe that the prohibitions of Section 521.126(b) of the new amendment to the Transportation Code are not applicable to the Port Authority by reason of Section 521.126(d), and, accordingly, its credentialing requirements under its intended security plan are not prohibited by this recent legislation.

The Port of Houston Authority is an independent political subdivision of the State of Texas. The overall Port of Houston, the nation's second largest, is a critical economic driver for the greater Houston area as well as the entire Texas economy. As the sole governmental authority operating in the Port of Houston, and in the post September 11 environment with our seaports having been identified as perhaps the most vulnerable part of the nation's infrastructure, the Port Authority must endeavor to provide a security system that complies with applicable law and is efficient, practical, timely and economically feasible.



District 52

The Port Authority owns, operates and leases facilities located on and adjacent to waters subject to the jurisdiction of the United States. Accordingly, in addition to being subject to laws enacted by the Texas Legislature, it is subject to federal maritime laws pertaining to security and law enforcement including the *Maritime Transportation Security Act of 2002* (P.L. 107-295, "MTSA"); the *Magnuson Act* (50 U.S.C. §§ 191 et seq.) *Ports and Waterways Safety Act* (33 U.S.C. §§ 1221 et seq.), and regulations under the foregoing (including particularly those found in 33 CFR Parts 105); and the *Navigation and Vessel Inspection Circulars* ("NVIC") issued by the United States Coast Guard, including particularly NVIC 11-02 on *Recommended Security Guidelines for Facilities*. These laws require the Port Authority, among other security measures, to implement a plan, called a Facility Security Plan, to control access to its facilities and to know who is in its facilities at all times. The Plan must be submitted for approval by December 31, 2003, and must detail an acceptable issuing authority for its identification credentials.

I appreciate your review and look forward to receiving your opinion in the very near future in order to facilitate the Port of Houston Authority's ability to carry out its responsibilities and federally-imposed duties in this particularly important area of security. If you need further information, please contact Wendy Reilly in my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Krusee". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Mike Krusee