

KEITH G. ALLEN
First Assistant

TERRI TIPTON HOLDER
Chief - Criminal Division



JIM WIGINTON
Chief - Civil Division

JOHN BLANKENSHIP
Chief Investigator

JERI YENNE
CRIMINAL DISTRICT ATTORNEY
BRAZORIA COUNTY

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OPINION COMMITTEE

April 20, 2006

The Honorable Greg Abbott
Attorney General of Texas
PO Box 12548
Austin, Texas 78711-2548

FILE # ML-44761-06
I.D. # 44761

RQ-0481-GA

Dear General Abbott:

Brazoria County ("County") entered into an interlocal agreement with the Texas Department of Public Safety ("D.P.S.") to implement the provisions of Texas Transportation Code ("Trans Code") Chapter 706. A copy of the agreement is attached as exhibit "A". The D.P.S., in turn, has entered into a contract with a private vendor which collects information as to which Texas drivers failed to appear before Justices of the Peace and Municipal Judges to take care of finds and costs against them. The law provides that those drivers who have so defaulted shall be denied renewal of their Texas driver's license when their existing permit expires. They cannot regain their license until fines, fees and administrative fees associated with this collection effort are fully paid. The collection of this data is called the FTA System (for "failure to appear").

Trans Code §706.002(a) provides as follows:

A political subdivision may contract with the Department ("D.P.S.") to provide information necessary for the department to deny renewal of the

COUNTY COURTHOUSE, 111 E. LOCUST, SUITE 408A, ANGLETON, TEXAS 77515

Angleton Area
(979) 864-1230

Brazosport Area
(979) 388-1230

Houston Area
(281) 756-1230

Fax-Criminal Division
(979) 864-1525

Fax-Civil Division
(979) 864-1712

Fax-CPS Division
(979)-849-8914

driver's license of a person who fails to appear for a complaint or citation or fails to pay or satisfy a judgment ordering payment of a fine and costs in the manner ordered by the court in a matter involving any offense that a court has jurisdiction of under Chapter 4, Texas Code of Criminal Procedure.

Chapter 4 of the Code of Criminal Procedure provides for the jurisdiction of all of the criminal courts in Texas from the municipal courts to the Texas Court of Criminal Appeals.

Trans Code §706.003 requires a warning on each citation issued *for a violation of a traffic law* that the person so issued is subject to non-renewal of their drivers license if the following occurs:

- 1) "failure to appear in court as provided by law for the prosecution of the offense [for which the citation was issued]" or
- 2) fails to pay or satisfy fine and costs ordered by the Court.

Trans Code §706.002(a) does not state that the FTA statutory scheme could only be invoked in cases involving courts of original jurisdiction over cases punishable by fine only or by sanctions other than confinement or incarceration.

Code of Criminal Procedure Articles 4.11 and 4.12 set out such jurisdictions respectively for the Justice Courts and municipal courts. Trans Code §706.001(7) defines "political subdivision" (which can enter into an FTA agreement) as a county or municipality but there exists no limitation on the different jurisdictions contained in a county which administers Class A, Class B and Class C misdemeanors. The first two classes typically categorize offenses which, in part, offer confinement or imprisonment as an element of punishment (Class A- Penal Code §12.21; Class B- Penal Code §12.22).

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“Complaint” as used in Trans Code Chapter 706 is a notice of offense as described by Article 27.14(d) or 45.019 of the Code of Criminal Procedure (Trans Code §706.001(1)). Article 27.14(d) discusses written notice of an offense for which the maximum possible punishment is by “fine only” or of a parking offense. The written notice becomes a complaint if it conforms to the requirements of Article 45.019 and thus serves as the “original complaint”. Article 45.019 sets out the formalities of such complaints in Justice and Municipal Courts only.

Trans Code §706.002(a) sets out the authority for County and D.P.S. to enter into the contract on the FTA System. Although it defines a political subdivision as either a “municipality or county” (Trans Code §706.001(7)), it does not limit the nature and jurisdiction of Courts which can utilize the scheme. In fact it discusses “any matter involving any offense that a court has jurisdiction of under Chapter 4, Code of Criminal Procedure.” Trans Code §706.003 describes a warning that is included on a traffic ticket.

Questions Presented

- 1) Is the FTA system limited to traffic tickets?
- 2) Can the FTA system be used to collect fines and costs on non-traffic Class C offenses?
- 3) Can the FTA system be used to collect fines and costs for Class B and above misdemeanors and felonies and may it be used for filed cases in county and district courts for which there has been no initial arrest but an active warrant exists? For example, a Class A Theft by Check case is filed by complaint and information in county court. A probable cause finding is made and a warrant is issued at the county court level by the

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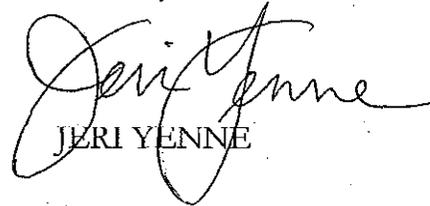
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county court. The case remains pending but the defendant has not yet been arrested on that active warrant. May this case regarding this defendant be entered into the OMNI system?

Sincerely,



JERI YENNE

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