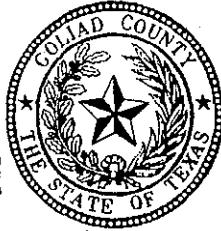


RECEIVED

OCT 30 2006

OPINION COMMITTEE



ROB BAIAMONTE  
County Attorney  
Goliad County, Texas

P. O. Box 24, Goliad, Texas 77963  
(361) 645-2184  
Fax (361) 645-1711  
Email: rbaiamonte@goliad.net

FILE # ML-45043-D6  
I.D. # 45043

October 20, 2006

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

CERTIFIED MAIL #7003 3110 0005 8156 5632

**RQ. 0549-GA**

Re: *Whether vehicles retained by the Sheriff used to transport illegal aliens should be disposed pursuant to Article 18.17 of the Texas Code of Criminal Procedure or by Chapter 683 of the Texas Transportation Code.*

*If said vehicles are disposed of pursuant to Chapter 683 of the Texas Transportation Code are the proceeds of "new" revenues..*

Dear Mr. Abbott:

The facts of our situation are as follows:

From time to time Goliad County has a major influx of illegal aliens traveling through the County. When stopped by law enforcement, often times, everyone runs out of the vehicle into the brush, never to be seen again, meanwhile the vehicle is abandoned on the side of the road. Our Sheriff immediately hauls the vehicle down to his yard and starts the notice process to the registered owner pursuant to Chapter 683. These vehicles are either auctioned off or retained by the Sheriff pursuant to Chapter 683.

Lately the Sheriff has been "loaning" the retained vehicles to other county departments. Currently, four vehicles are on loan to county commissioners, one vehicle to emergency management, one to the County Extension Office and one vehicle to the courthouse maintenance department.

Our Auditor, while reviewing the county's inventory, became concerned about how these retained vehicles were being titled. It appears there are two approaches used by the County.

First, the County does not run the vehicle through the auction, but on the Texas Department of Transportation form the County represents that the vehicle was run through the auction and the County paid \$0.00 for it. A copy of such transaction is enclosed as Exhibit "A".

The second way is the vehicle is not run through the auction and on the Texas Department of Transportation form "no sale, to be used for law enforcement purposes only as per Transportation Code §683.034" is typed in describing the amount paid for the vehicle; a copy is attached as Exhibit "B".

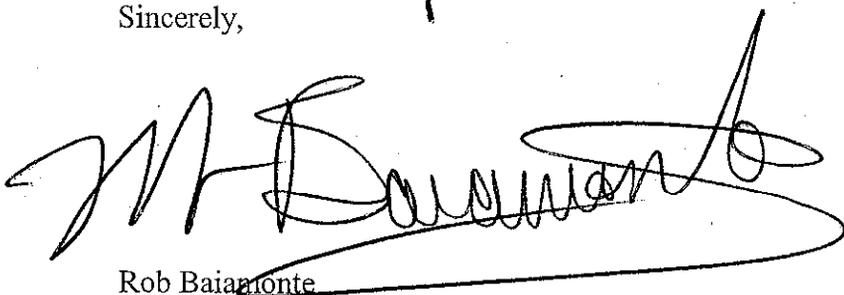
Proceeds from the abandoned vehicle sale are currently being deposited in the general fund, less \$1,000.00, pursuant to §683.015(d) of the Transportation Code, to be used for law enforcement.

Our questions are:

- (1) Should abandoned vehicles used to transport illegal aliens be disposed of pursuant to Article 18.17 of the Code of Criminal Procedure or pursuant to Chapter 683 of the Texas Transportation Code?
- (2) Can a vehicle retained by the Sheriff's Office under §683.016 be put into service by another county department?
- (3) Is it sufficient when retaining an abandoned vehicle by law enforcement to fill in the TX DOT form "no sale, to be used for law enforcement purposes only as per Transportation Code 683.034" or should the retained vehicle go through the auction and purchased by the Sheriff's Department?
- (4) Are the proceeds from the Chapter 683 vehicle auction considered a "new source" by the Auditor pursuant to §111.0108 of the Texas Local Government Code?

Your responses to these inquiries are greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Baianonte", with a large, sweeping underline that extends across the width of the signature.

Rob Baianonte

RB/yjt

## Brief on Abandoned Vehicles

When a vehicle is stopped by law enforcement and all the occupants run off into the brush the Sheriff has taken the position that the vehicle is abandoned under Chapter 683 of the Texas Transportation Code. Chapter 683.002 provides that a vehicle that has remained illegally parked on public property, the highway right-of-way, for more than 48 hours may be removed by law enforcement. The Sheriff's position is the vehicle is a health and safety issue and cannot remain there 48 hours, therefore he removes it immediately to his impound lot. The Sheriff then starts the notice provisions under §683.012 and eventually sells or retains all unclaimed vehicles.

It appears that the more appropriate statute that would apply in this circumstance is Article 18.17 of the Texas Code of Criminal Procedure. Article 18.17 provides that "all unclaimed or abandoned personal property of every kind, other than contraband subject to forfeiture under Chapter 59 of this code and whiskey, wine and beer, seized by any peace officer in the State of Texas which is not held as evidence to be used in any pending case and has not been ordered destroyed or returned to the person entitled to possession of the same by a magistrate, which shall remain unclaimed for a period of 30 days shall be delivered for disposition to a person designated by the . . . county in which the property was seized. . . . If the county has no purchasing agent, then the property shall be disposed of by the Sheriff of the county." (Emphasis added)

Since there is rarely an arrest in these cases there are no charges brought and no evidence that needs to be held. Therefore, it appears that Article 18.17 is the statute that applies in these cases when illegal aliens run off into the brush and no case is ever filed.

In the event that Chapter 683 of the Transportation Code is applicable, I see no authorization in Chapter 683 that would allow the Sheriff to "loan" the retained vehicles to non-law enforcement departments. The statute is very clear, since it defines what a law enforcement agency is, that loaning a vehicle to a commissioner, extension agent, or fire department is prohibited.

If law enforcement does retain a vehicle, for law enforcement purposes, the form promulgated by TX Dot only contemplates an auction, see Exhibit A & B attached. There is no provision on the TX Dot form that allows law enforcement to simply retain the vehicle.

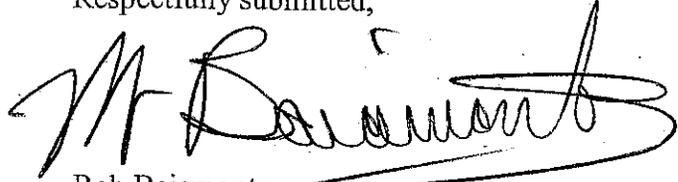
From a practical viewpoint the county can purchase the vehicle at the auction, write a check, payable to the county, from the county funds and then deposit the check back into county funds. It would not cost the county any money to purchase the vehicle at the auction and would show an amount paid at the auction.

The Sheriff has these auctions a couple of times a year. The amount of revenues generated varies, but there is always some revenue. Similar to the revenues generated by the clerk's office when making copies for land men. Since these revenues are anticipated each year it appears that §111.0108 of the Texas Local Government Code does not apply.

In conclusion, Article 18.17 of the Code of Criminal Procedure applies to the disposition of vehicles abandoned on the side of the road when illegal aliens flee the scene and no charges are filed. If Chapter 683 of the Transportation Code applies to these vehicles they can not be used by non-law enforcement agencies or departments. If the Sheriff wants to retain the vehicle it should be run through the auction.

When an auction is held the revenue is not new revenue as defined in §111.0108 of the Local Government Code.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rob Baiamonte". The signature is written in a cursive style with a large, sweeping flourish at the end.

Rob Baiamonte  
Goliad County Attorney  
P.O. Box 24  
Goliad, TX 77963  
(361) 645-2184  
State Bar No. 01513300