

CAPITOL OFFICE:
P.O. BOX 2910
AUSTIN, TX 78768-2910
(512) 463-0690
FAX: (512) 477-5770
CAPITAL BUILDING, GW.18

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OPINION COMMITTEE



VICKI TRUITT

DISTRICT 98

August 3, 2010

DISTRICT OFFICE:
1256 MAIN STREET, SUITE 248
SOUTHLAKE, TX 76092-7624
(817) 488-4098
FAX: (817) 488-4099
SOUTHLAKE TOWN SQUARE

FILE # ML-46570-10
I.D. # 46570

The Honorable Greg Abbott
Attorney General of Texas
209 W. 14th Street
Austin, Texas 78701

Dear General Abbott:

As chair of the House Committee on Pensions, Investments, and Financial Services, I ask for your opinion regarding the interpretation of the prohibition against "automated traffic control systems" as provided by Section 542.2035, Transportation Code. Specifically, I ask whether this statute prohibits a peace officer employed by a municipality from using a handheld laser speed enforcement device equipped with a video camera and GPS technology to collect evidence before initiating a traffic stop.

Section 542.2035, Transportation Code, states:

Sec. 542.2035. LIMITATION ON MUNICIPALITIES. (a) A municipality may not implement or operate an automated traffic control system with respect to a highway or street under its jurisdiction for the purpose of enforcing compliance with posted speed limits. The attorney general shall enforce this subsection.

(b) In this section, "automated traffic control system" means a photographic device, radar device, laser device, or other electrical or mechanical device designed to:

- (1) record the speed of a motor vehicle; and
- (2) obtain one or more photographs or other recorded images of:
 - (A) the vehicle;
 - (B) the license plate attached to the vehicle; or
 - (C) the operator of the vehicle.

It could be argued that the language of the statute prohibits the use of any electronic speed enforcement device that obtains photographs of a vehicle, regardless of whether the device is automated or used by an officer to collect evidence prior to a traditional traffic stop.

In 2007, the legislature sought to prohibit the type of automated speed enforcement systems that photograph vehicles and then mail citations to vehicle owners, without an officer

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initiating a traffic stop. Such systems remove the discretion that would normally accompany a traditional traffic stop. Unlike police officers, automated speed enforcement systems cannot make allowances for extenuating circumstances and presume that the owner of a vehicle is the person driving the vehicle at the time of the violation. The legislature was concerned that the accused individual may have been unaware that an infraction had occurred, reducing the individual's ability to prepare and present a complete defense to the charges.*

New advancements in technology have produced devices that incorporate video cameras and GPS systems into conventional handheld laser speed enforcement equipment. Such devices provide a complete chain of video and satellite evidence for officers to use in court. Unlike the automated speed enforcement systems, these devices are personally operated by an officer. In addition, once a speeding violation has been detected, the officer initiates a traffic stop and either arrests or issues a citation to the operator of the vehicle. The driver is fully aware of the alleged infraction, and the officer may use the officer's discretion in evaluating any extenuating circumstances.

Currently, the Plano Police Department is considering purchasing one of these new speed enforcement devices for use by its traffic enforcement officers. After reviewing the wording of Section 542.2035, city officials are concerned that the statute possibly prohibits the use of this new technology. I seek your opinion regarding this issue. Thank you for your time and attention to this matter, and please let me know if I can provide any additional information or further assistance.

Respectfully submitted,



Vicki Truitt, Chair
House Committee on Pensions, Investments, and
Financial Services

*House Research Organization, Bill Analysis, H.B. 922, 80th Leg., R.S. (2007).