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ELLIS COUNTY & DISTRICT ATTORNEY

SEP 10 2015

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OPINION COMMITTEE

September 3, 2015

**Via CM/RRR: 7007 0710 0003 5878 7075**

Office of the Attorney General  
Attention Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

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FILE # ML-47812-15  
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RQ-0052-KP

Dear General Paxton:

Ellis County Commissioners Court is considering the adoption of an optional county fee for child safety authorized by Section 502.403 of the Texas Transportation Code. The additional fee would be \$1.50 for registering a vehicle in the county. TEX. TRANS. CODE ANN. § 502.403(a) (Vernon 2014). A question has arisen regarding the proper disposition of the revenue generated by this fee.

Some counties believe that after deducting administrative costs the county may use revenue generated from the fee for purposes permitted by Article 102.014(g), Code of Criminal Procedure without sending any portion of the fee revenue to the municipalities. See TEX. TRANS. CODE ANN. § 502.403(g) (Vernon 2014).

However, other counties believe that after deduction of administrative costs and after deduction of fee revenue proportional to the percentage of county residents living in the unincorporated areas, the remainder of the fee revenue must be sent to the municipalities according to their population. See TEX. TRANS. CODE ANN. § 502.403(e) (Vernon 2014).

Subsections (e) and (g) of section 502.403 use the word "may" three times and use the word "shall" once. We question whether the use of "shall" imposes a mandatory duty on Ellis County to dispense any of the fee revenue generated by this optional fee to the municipalities in Ellis County.

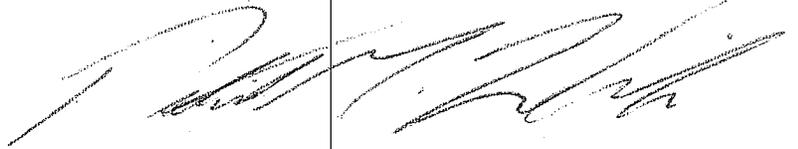
There is no absolute test by which it may be determined whether a statutory provision is mandatory or directory. The fundamental rule is to ascertain and give effect to the legislative intent. Although the word "shall" is generally construed to be mandatory, it may be and frequently is held to be merely directory. In determining whether the Legislature intended the particular provision to be mandatory or merely directory, consideration should be given to the entire act, its

nature and object, and the consequences that would follow from each construction. Provisions which are not of the essence of the thing to be done, but which are included for the purpose of promoting the proper, orderly and prompt conduct of business, are not generally regarded as mandatory.

**Chisholm v. Bewley Mills, 287 S.W.2d 943, 945 (Tex. 1956).**

So the question for your deliberation is whether Section 502.403(e) of the Texas Transportation Code imposes a duty on Ellis County to send proportional fee revenue from the optional county fee for child safety to each municipality within Ellis County?

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick M. Wilson', is written over a vertical line that runs down the right side of the page.

Patrick M. Wilson  
Ellis County & District Attorney

cc: Commissioner Lane Grayson  
Ellis County Precinct 2  
1400 Oak Grove Road  
Ennis, TX 75119