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By Opinion Committee at 7:56 am, Aug 14, 2020

**Victim Services
Hot Checks Division****I.D.# 48855****Criminal Division
Civil Division****EDDIE ARREDONDO
Burnet County Attorney**

August 13, 2020

The Honorable Ken Paxton
Office of the Attorney General
Attn: Opinion Committee
P.O. Box 12548
Austin, TX 78711
Email: opinion.committee@oag.texas.gov

Dear Attorney General Paxton,

I am writing to request an opinion on behalf of the Burnet County Sheriff's Office regarding a section of the Texas Transportation Code that sets out fines for overweight commercial vehicles. The Code sets out a graduated fine schedule depending upon the amount a vehicle is over the allowable weight. The issue is whether this fine schedule applies to commercial vehicles that would otherwise be under the weight limit set by said statute, if not for the fact that the vehicle was operating on a road that has been zoned for a lower weight than the general maximum allowable weight.

Legal Background

Texas Transportation Code Section 621.101 – Maximum Weight of Vehicle or Combination, sets out the weight limits allowable on public highways in the State of Texas.

Texas Transportation Code Section 621.102 – Authority to Set Maximum Weights, grants the executive director of the Texas Department of Transportation to set lower maximum weight limits for certain state roads if need be.

Texas Transportation Code Section 621.506 – Offense of Operating or Loading Overweight Vehicle; Penalty Defense, sets out the graduated fine schedule for overweight vehicles with fines that can range from \$100.00 to \$10,000. Specifically, section 621.506 (a) states "A person commits an offense if the person: (1) operates a

vehicle or combination of vehicles in violation of *Sections 621.101 (emphasis added)*, 622.031, 622.041, 622.0435, 622.051, 622.061, 622.133, 622.953, or 6323.162; or (2) loads a vehicle or causes a vehicle to be loaded in violation of Section 621.503.”

Texas Transportation Code Section 621.507 – General Offenses; Penalty, sets out a max fine of \$200.00 (in general) for all violations of the subtitle that are not specifically stated.

Question

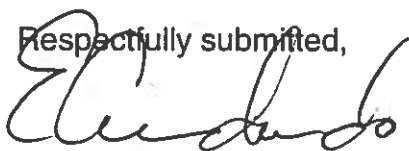
Does a violation of a reduced weight limit on a roadway as outlined under section 621.102 qualify for the punishment outlined under section 621.506 or section 621.507?

It is the belief of the Burnet County Attorney’s Office that a violation of a weight limit on a roadway that has been modified under section 621.102 is an offense of section 621.102. If true, then said violation is not listed under the higher punishment range listed under section 621.506; and therefore, the lower punishment level (maximum fine of \$200) found in section 621.507 applies to the offense. Because Section 621.101 does not list a reduced weight limit violation authorized by Section 621.102 in its wording, such a violation is related to section 621.102 itself. When a complaint is prepared for a violation of a reduced weight roadway as outlined under section 621.102 occurs, what statute should the complaint list to give a defendant adequate notice of the violation? The Burnet County Attorney’s Office contends it should list section 621.102.

The Burnet County Sheriff’s Office believes that section 621.102 only grants power to modify the gross weight limit and a violation of a lowered weight limit on a roadway is an offense of section 621.101. If true, then the punishment level for such an offense falls under section 621.506 because section 621.101 is listed thereunder. Further, when listing the statute in the complaint, section 621.101 not 621.102 should be cited.

Due to the potential of a large fine amount, the disagreement between agencies and counties, the damage being caused by overweight trucks in a steadily growing county, and the impact this causes on the amount of expenditures necessarily made annually to repair the roads with tax payer funds, this issue would greatly benefit from any clarity and/or insight your office may have.

Respectfully submitted,



Eddie Arredondo
Burnet County Attorney