

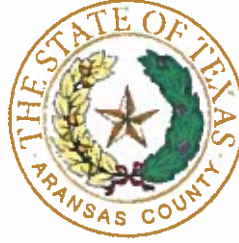
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By Opinion Committee at 3:07 pm, Aug 18, 2023

RQ-0005-AC

FILE# ML-49296-23

I.D.# 49296



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August 18, 2023

Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548
opinion.committee@oag.texas.gov

Re: Request for Attorney General Opinion regarding a certified and licensed deputy sheriff's authority to operate a fixed commercial vehicle weigh station.

Dear Opinion Committee,

The Aransas County Auditor requests your formal opinion on the following question:

Can a deputy sheriff certified under Transportation Code 621.401 and 621.402 operate a fixed commercial motor vehicle weigh station directing all commercial vehicles to enter the facility to have their weight inspected for violations? At a fixed commercial vehicle weigh station there is a traffic control sign on the highway directing all commercial vehicles to enter to have their weight inspected to determine if it is in compliance within state law.

Although there are no current court rulings regarding a deputy sheriff's authority to operate a fixed commercial motor vehicle weigh station, the Texas Court of Criminal Appeals opinion in *Holt v. State* interpreted the United States Supreme Court's opinion in *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990) regarding the constitutionality of sobriety checkpoints. In *Sitz*, the United States Supreme Court held that the states sobriety checkpoints were constitutional under the Fourth Amendment. The court stated that the choice of law enforcement alternatives remained with politically accountable government officials who have the responsibility for utilizing limited government resources. Previously, however, the United States Supreme Court referred to driver license checkpoints in *Delaware v. Prouse* 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979). In *Prouse* the Court held that random traffic stops made without reasonable suspicion to check driver licenses were unconstitutional. But, the Court went on to state "this holding does not

preclude the State of Delaware or other States from developing methods for spot checks that involve less intrusive or that do not involve the unconstrained exercise of discretion. The questioning of all oncoming traffic at a roadblock-type stop is one possible alternative. At a fixed commercial motor vehicle weigh station there is a highway traffic sign directing all commercial vehicles to enter the facility to have their weight inspected. In *City of Indianapolis v. Edmunds* the United States Supreme Court again suggested that checkpoints held to check driver licenses and registration status would be constitutionally permissible because, like sobriety checkpoints, the purpose of such checkpoints is traffic safety rather than general criminal interdiction. *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S. Ct. 447, 148 L. Ed. 2d 333 (2000). The purpose of weighing commercial vehicles is to determine if the vehicle is in compliance with the States weight and size laws because over weight vehicles cause damage to our Texas roadways making them unsafe.

I would greatly appreciate your attention and consideration for this question. Commercial motor vehicle weigh stations could potentially serve significant public interest in highway traffic safety and your opinion in this matter will help us in the formulation of appropriate law enforcement and administrative policy.

Respectfully,



Jacky Cockerham
County Auditor

cc: File
County Judge
County Attorney
County Sheriff