



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 26, 2018

The Honorable Joseph C. Pickett  
Chair, Committee on Environmental Regulation  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Opinion No. KP-0184

Re: Extent to which the administrative fee provisions of subsection 228.0547(b) of the Transportation Code apply to an entity operating a toll lane pursuant to subsection 228.007(b) of the Transportation Code (RQ-0178-KP)

Dear Representative Pickett:

Your question concerns Senate Bill 312 which, among other things, imposed a cap on the administrative fee the Texas Department of Transportation (the “Department”) may add to an unpaid toll invoice stemming from a person’s use of a toll project on a state highway.<sup>1</sup> *See* Act of May 27, 2017, 85th Leg., R.S., ch. 533, § 31, 2017 Tex. Gen. Laws 1439, 1450 (codified at TEX. TRANSP. CODE § 228.0547(b)) (authorizing the Department to “add an administrative fee, not to exceed \$6, to the amount the person owes” if the person does not pay the initial toll invoice); *see also id.* § 74, 2017 Tex. Gen. Laws 1439, 1462 (deleting TEX. TRANSP. CODE § 228.055(b), which previously allowed the Department to impose an administrative fee “not to exceed \$100”). You explain that although the new limited administrative fee provision “expressly applies only to the [D]epartment,” other entities in particular circumstances have “the same powers and duties” as the Department with regard to toll collection and enforcement. Request Letter at 1. Specifically, section 228.059 of the Transportation Code provides that “[a]n entity operating a toll lane pursuant to Section 228.007(b) has, with regard to toll collection and enforcement for that toll lane, the same powers and duties as the department under [chapter 228].” TEX. TRANSP. CODE § 228.059; *see also* Request Letter at 1. With the new limited administrative fee provisions in mind, you ask to what extent such provisions constitute “powers and duties” of the Department that “apply . . . to an entity operating a toll lane pursuant to Section 228.007(b)” of the Transportation Code. Request Letter at 1.

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<sup>1</sup>*See* Letter from Honorable Joseph C. Pickett, Chair, House Comm. on Env’tl. Regulation, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Sept. 11, 2017), <https://www.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

The operation of a toll lane pursuant to subsection 228.007(b) begins with an order by the Texas Transportation Commission<sup>2</sup> pursuant to subsection 228.007(a) authorizing the Department “to charge a toll for the use of one or more lanes of a state highway.” TEX. TRANSP. CODE § 228.007(a). Once the authorization order is in place, the Department has the option to

enter into an agreement with a regional tollway authority described in Chapter 366, a transit authority described in Chapter 451, 452, or 453, a coordinated county transportation authority under Chapter 460, a regional mobility authority under Chapter 370, a county acting under Chapter 284, or a transportation corporation: (1) to design, construct, operate, or maintain a toll lane *under this section*; and (2) to charge a toll for the use of one or more lanes of a state highway facility *under this section*.

*Id.* § 228.007(b)(2) (emphasis added). An entity with which the Department contracts pursuant to subsection 228.007(b)(2) has “the same powers and duties” as the Department “with regard to toll collection and enforcement.” *Id.* § 228.059. Section 228.0547 addresses the Department’s authority over toll collection and enforcement on state highway toll projects. If a person fails to pay for his or her use of a toll lane in a timely manner after receiving an invoice, the Department “may add an administrative fee, not to exceed \$6, to the amount the person owes.” *Id.* § 228.0547(b). The Department “(1) must set the administrative fee by rule in an amount that does not exceed the cost of collecting the toll; and (2) may not charge a person more than \$48 in administrative fees in a 12-month period.” *Id.* The enforcement power of an entity operating a toll lane pursuant to section 228.007(b), therefore, is likewise limited to adding an administrative fee not exceeding \$6 to the amount a person owes and charging that person not more than \$48 in administrative fees in a 12-month period.

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<sup>2</sup>The Texas Transportation Commission (“Commission”) governs the Department. TEX. TRANSP. CODE § 201.201; *see also id.* § 201.102 (referring to “the policy-making responsibilities of the commission and the management responsibilities of the director and staff of the department”).

S U M M A R Y

The administrative fee provisions of subsection 228.0547(b) of the Transportation Code are powers and duties of the Department of Transportation that apply to an entity that contracts with the Department pursuant to subsection 228.007(b) of the Transportation Code to operate a toll lane.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive style with a large, prominent "K" and "P".

KEN PAXTON  
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