



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 31, 2022

The Honorable Rob Baiamonte  
Goliad County Attorney  
Post Office Box 24  
Goliad, Texas 77963

**Opinion No. KP-0399**

Re: Authority of Goliad County to erect signage in a state highway right-of-way under Transportation Code chapter 394 in particular circumstances (RQ-0422-KP)

Dear Mr. Baiamonte:

You ask about Goliad County’s authority to erect signage in a state highway right-of-way under Transportation Code chapter 394, which regulates outdoor advertising signs on rural roads.<sup>1</sup> *See generally* TEX. TRANSP. CODE §§ 394.001–.087.

**Background**

In May of 2021, the Governor issued a disaster proclamation under section 418.014 for several specified counties, including Goliad County, along the border proclaiming that “the ongoing surge of individuals unlawfully crossing the Texas-Mexico border poses an ongoing and imminent threat of severe damage, injury, and loss of life and property, including . . . human trafficking.”<sup>2</sup> That disaster proclamation continues, and the Governor most recently renewed that disaster proclamation on December 23, 2021.<sup>3</sup> You tell us that the Goliad County sheriff placed signs on U.S. Highway 59 in an unincorporated area near the border between Bee County and Goliad County. Request Letter at 1. We are informed that the signs are in Spanish and translate as the following:

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<sup>1</sup>See Letter from Honorable Rob Baiamonte, Goliad Cnty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (June 22, 2021), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0422KP.pdf> (“Request Letter”).

<sup>2</sup>GOVERNOR OF THE STATE OF TEXAS, DISASTER PROCLAMATION (May 31, 2021), [https://gov.texas.gov/uploads/files/press/DISASTER\\_border\\_security\\_IMAGE\\_05-31-2021.pdf](https://gov.texas.gov/uploads/files/press/DISASTER_border_security_IMAGE_05-31-2021.pdf). Office of the Governor, Proclamation 41-3822, 46 Tex. Reg. 3657, 3658 (2021).

<sup>3</sup>GOVERNOR OF THE STATE OF TEXAS, DISASTER PROCLAMATION RENEWAL (Dec. 23, 2021), [https://gov.texas.gov/uploads/files/press/DISASTER\\_renewing\\_covid19\\_disaster\\_proclamation\\_IMAGE\\_12-23-2021.pdf](https://gov.texas.gov/uploads/files/press/DISASTER_renewing_covid19_disaster_proclamation_IMAGE_12-23-2021.pdf), Office of the Governor, Proclamation 41-3870, 47 Tex. Reg. 5 (2022).

WARNING  
Traffickers of humans and drugs  
Turn around and go around  
Do not enter Goliad County  
Or we will hunt you down and put you in jail<sup>4</sup>

You further tell us that the Texas Department of Transportation (“TxDOT”) requested the sheriff to remove the signs and eventually removed the signs from the U.S. Highway 59 right-of-way. *Id.* You ask whether Goliad County may erect signs in the state highway right-of-way, specifically under exceptions in chapter 394 for signs to protect life and property, and signs erected by a political subdivision. *Id.*; *see* TEX. TRANSP. CODE § 394.003(a)(3), (6).

**Chapter 394 does not grant the county authority to place the signs in question.**

Title 6 of the Transportation Code governs highways and roads in the State. *See generally* TEX. TRANSP. CODE §§ 201.001–474.004 (Title 6). Chapter 394 is found in subtitle H, relating to “Highway Beautification.” *Id.* §§ 391.001– 430.002 (subtitle H). Chapter 394 regulates outdoor advertising signs that are visible from the main-traveled way on rural roads, requiring licenses and permits from the Texas Transportation Commission (the “Commission”) and regulating such matters as height, placement, spacing, and similar matters. *See id.* §§ 394.001–.087.

You suggest that exceptions in section 394.003 for signs to protect life and property and signs erected by a political subdivision may authorize Goliad County to erect the sheriff’s sign. Request Letter at 1; *see* TEX. TRANSP. CODE § 394.003(a)(3), (6). But section 394.003 excepts such signs only from the regulations and requirements in chapter 394. TEX. TRANSP. CODE § 394.003(a). Chapter 394 does not address whether a county has authority to place a sign on a highway right-of-way in the first instance. Because chapter 394 does not grant such authority to a county, we must consider more broadly how Transportation Code Title 6 and federal law allocate authority regarding sign placement on highway rights-of-way. We begin by examining TxDOT’s responsibility for highway signage.

**TxDOT possesses authority concerning signage on state highways under state and federal law.**

The TxDOT executive director, with the direction and approval of the Commission, must prepare a plan “for the location, construction, and maintenance of a comprehensive system of state highways and public roads.” *Id.* § 201.103(a), (d); *see also id.* § 221.001(3) (defining “State highway system” as “the highways in this state included in the plan providing for a system of state highways prepared by the director under Section 201.103”). TxDOT “has exclusive and direct control of all improvement of the state highway system.” *Id.* § 224.031. TxDOT “may classify, designate, and mark state highways in this state” and “may provide a uniform system of marking and signing state highways under the control of the state.” *Id.* § 201.903.

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<sup>4</sup>*See* Letter from Honorable Roy Boyd, Goliad Cnty. Sheriff at 4 (Sept. 1, 2021) (on file with the Op. Comm.).

TxDOT informs us that U.S. Highway 59 is part of the state highway system, which in turn is part of the federal-aid highway system and therefore subject to federal law.<sup>5</sup> For federally funded highways, “the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any public authority or other agency, shall be subject to the approval of the State transportation department.” 23 U.S.C. § 109(d). Thus, TxDOT has authority with respect to the placement of signs on a highway right-of-way under state and federal law.

**Title 6 of the Transportation Code prohibits placement of a sign on a state highway right-of-way unless authorized by state law.**

Chapter 392, subchapter B governs signs on a state highway right-of-way. *See* TEX. TRANSP. CODE §§ 392.031–.038. Under the subchapter, a “sign” is “an outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, or other thing designed, intended, or used to advertise or inform,” and a “state highway right-of-way” is “the right-of-way of a highway designated as part of the state highway system.” *Id.* § 392.031. Under section 392.032, it is an offense to “place or maintain a sign on a state highway right-of-way unless authorized by state law.”<sup>6</sup> *Id.* § 392.032(a). TxDOT may remove and dispose of a sign that is placed or maintained in violation of the prohibition. *Id.* § 392.033(a), (b).

**Counties do not possess authority to place informational signs on state highway rights-of way independent of TxDOT or the Texas Transportation Commission.**

Only two provisions in Title 6 specifically address county authority to place a sign on a state highway. Section 224.033 authorizes the Commission to enter into an agreement with a commissioners court for county improvement of the state highway system. *Id.* § 224.033(a). For purposes of section 224.033, an “improvement” is the “construction, reconstruction, maintenance, and the making of a necessary plan or survey before beginning construction, reconstruction, or maintenance and includes a project or activity appurtenant to a state highway and including drainage facilities, surveying, traffic counts, driveways, landscaping, *signs*, lights, or guardrails.” *Id.* § 224.033(b) (emphasis added). While an improvement to the state highway system under this statute could include a sign, county authority to erect such a sign under this statute depends on the Commission’s agreement. *Id.* § 224.033(a).

Finally, in a chapter of miscellaneous provisions, section 430.001 provides:

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<sup>5</sup>*See* Letter from Mr. Jeff Graham, Gen. Counsel, Tex. Dept. of Transp., to Honorable Ken Paxton, Tex. Att’y Gen. at 1, 2 (Aug. 16, 2021) (on file with the Op. Comm.).

<sup>6</sup>Chapter 393 also prohibits “plac[ing] a sign on the right-of-way of a public road unless the placement of the sign is authorized by state law.” TEX. TRANSP. CODE § 393.002. While we need not decide the issue here, the term “public road” in this statute may primarily concern county roads. *See* Tex. Att’y Gen. Op. No. KP-0240 (2019) at 1 (noting that statutes commonly use the term “public roads” to refer to county roads—roads that are a part of a county road system). Chapter 393 specifically authorizes the sheriff and other county officials to confiscate an illegally placed sign without reference to TxDOT. *See* TEX. TRANSP. CODE § 393.003(a).

(a) A political subdivision may place along a public right-of-way under the control of the political subdivision an advisory safety or useful directional sign that cannot be mistaken as an official sign.

(b) The political subdivision may not place the sign along a state highway for revenue purposes.

*Id.* § 430.001(a). A “public right of way” in subsection (a) could include a state highway in some circumstances. *Id.* § 430.001(a), (b). Subsection (a) grants authority to a political subdivision, which may include a county. *See State v. Hollins*, 620 S.W.3d 400, 406 (Tex. 2020) (stating that counties are political subdivisions of the State). For some purposes, a county has “general control over all roads, highways, and bridges in the county.” *See* TEX. TRANSP. CODE § 251.016. But a court is likely to conclude that a county’s general right of control of roads and highways and any authority to place signs on state highways is subordinate to both TxDOT’s exclusive control of state highway improvements under Texas law and to federal law requirements for TxDOT approval of sign placement on federally funded highways. *See id.* § 224.031 (“The department has exclusive and direct control of all improvement of the state highway system.”); 23 U.S.C. § 109(d) (requiring the state transportation department to approve the “location, form, and character of informational, regulatory and warning signs” installed by a public authority on any highway project receiving federal funds). Accordingly, a county does not have the authority to place a sign in a state highway right-of-way contrary to the position of TxDOT. *See* Tex. Att’y Gen. Op. No. H-547 (1975) at 2 (stating that a “county may perform certain functions in regard to control of state highways including the placement of signs, to the extent that their activities are not in conflict with the policy of [the predecessor of TxDOT]”).<sup>7</sup>

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<sup>7</sup>While you do not ask about the authority to erect the signs under the Disaster Act or the Governor’s disaster proclamation, we note that the Governor’s border disaster proclamation does not suspend the TxDOT’s statutory authority regarding the regulation of signs in a state highway right-of-way. *See* TEX. GOV’T CODE § 418.016(a) (authorizing the Governor to “suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster”). “While local officials possess certain limited emergency powers, those powers do not authorize a county judge to amend state law that the Legislature has expressly removed from local control.” Tex. Att’y Gen. Op. No. KP-0306 (2020) at 3.

S U M M A R Y

A county does not have the authority to place a sign in a state highway right-of-way without approval of the Texas Department of Transportation or an agreement with the Texas Transportation Commission.

Very truly yours,

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

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