



Tyler County

Criminal District Attorney
Joe R. Smith

RECEIVED

DEC 18 2002

OPINION COMMITTEE

RECEIVED

DEC 16 2002

OPEN RECORDS DIVISION

RQ-0008-GA

FILE # ML-42933-02
I.D. # 042933

December 12, 2002

Office of the Attorney General
Open Record Division
PO Box 12548
Austin, Texas 78711-2548

To the Honorable Greg Abbott:

In accordance with the Texas State Government Code, §402.043 I submit a request for an opinion by the Texas State Attorney General. The question at hand is If the county commissioners are authorized to extend to the residents of Ivanhoe a private subdivision, the traffic laws by the state of Texas and if so can they exempt all- terrain vehicles from the law? The facts are that Ivanhoe is a private subdivision located in Tyler County. They petitioned the Tyler County Commissioners Court to have the traffic laws of the state apply to their private roads. They recently filed an amendment with the Commissioners Court to have all-terrain vehicles exempted from the traffic laws that were extended to the subdivision. Included in this request is a brief, which examines this issue.

Respectfully Submitted,

Joe R. Smith
Criminal District Attorney, Tyler County, Texas

Issue

If the county commissioners are authorized to extend to the residents of Ivanhoe a private subdivision, the traffic laws by the state of Texas and if so can they exempt all-terrain vehicles from the law?

Facts

The residents of Ivanhoe Property Owners Association submitted a proposal in which they asked the County Commissioners Court of Tyler County, Texas to extend to the subdivision the traffic laws of the state of Texas. Ivanhoe is a private subdivision located in Tyler County. On January 18, 2002 the submitted a proposal to the Commissioners Court of Tyler County in which the sought to have all traffic laws extended to the County by the state of Texas to apply to the subdivision. The Tyler County Commissioners Court approved the proposal and issued a resolution to extend the traffic laws under Title 7 of the Texas State Transportation Code, specifically § 542.007. In addition the Ivanhoe Property Owners Association entered into an interlocutory agreement with the county in which the Tyler County Sheriff's Department would provide officers to enforce the traffic regulations. The Ivanhoe Property Owners Association recently submitted an amendment to the commissioner's court to exempt all-terrain vehicles from the laws.

Rule of Law

This is the first question of this kind there is no supporting case law just the applicable state statute. Specifically § 542.007, Which reads in part that

“(b) On petition of 25% of the property owners residing in a subdivision in which the roads are privately maintained or on request of the governing body of the entity that maintains those roads, the commissioners court if the county by order may extend any traffic rules that apply to the county road to the roads of the subdivision if the commissioners court finds that apply to the county road to the roads of the subdivision if the commissioners court finds the order is in the interest of the county generally. The petition must specify

the traffic rules that are sought to be extended. The court order may extend any or all requested traffic rules.”¹

Under Title 7 Subchapter C, § 663.002 All Terrain Vehicles are prohibited from operation on a public roadway. This section states in part that:

- (a) "A person may not operate an all-terrain vehicle on a Public Street, road or highway except as provided by this section.
- (b) The operator of an all-terrain vehicle may drive the vehicle across a public street, road, or highway that is not an interstate or limited access highway...
- (c) The operator of an all-terrain vehicle may drive the vehicle across a divided highway other than an interstate or limited access highway only at an intersection of the highway with another public street, road, or highway
- (d) The operator of an all-terrain vehicle may drive the vehicle on a public street, road, or highway that is not an interstate or limited access highway if:
 - (1) The transportation is in connection with the production, cultivation, care, harvesting, preserving, drying, processing, canning, storing, handling, shipping, marketing, selling, or use of agricultural products as defined by Section 52.002, Agriculture Code”².

“The provisions of Transportation Code, Title 7, subtitle C apply uniformly throughout the state, and a local authority, such as a city, may enact an ordinance that conflicts with a provision of subtitle C, only where subtitle C expressly authorizes it to do so.”³

ANALYSIS

Based upon the applicable statutes, the Tyler County Commissioners Court may extend to the Ivanhoe residents any or all of the traffic laws that are uniformly enforced throughout the State. This is found in § 542.007. It states in part that

“The commissioners court if the county by order may extend any traffic rules that apply to the county road to the roads of the subdivision if the commissioners court finds that

¹ Tex. Transp. Code Ann. § 542.007(b), (Vernon 1999)

² Tex. Transp. Code Ann. § 663.002 (Vernon 1999)

³ Tex. Transp. Code Ann. § 542.001 (Vernon 1999)

apply to the county road to the roads of the subdivision if the commissioners court finds the order is in the interest of the county generally.”⁴

The Tyler County Commissioners Court extended the traffic rules based upon the request of the residents on January 18, 2002. The Ivanhoe Property Owners Association entered into an interlocutory agreement with the county for the use of the Sheriff's Department to enforce these traffic laws. The problem that the Ivanhoe Property Owners Association has is that they wish to exempt all-terrain vehicles from the traffic regulations. They state that they are a private subdivision and that since they are a private subdivision they can request that certain laws do not apply. They have petitioned the county Commissioner's Court by amendment to make a special provision exempting all-terrain vehicles. In the Texas Attorney General's Opinion No. JC-0016 “a private drive road or driveway is a privately owned way or place used for vehicular traffic and used only by the owner and persons who have the owner's express or implied permission.”⁵ But the Ivanhoe Property Owners Association petitioned the Commissioners Court to extend the traffic laws of the county and state to their subdivision. In doing so they expressly agreed to make their streets open to the public for vehicular traffic. They entered into an interlocutory agreement to have a deputy enforce the traffic rules and regulations. If the streets remain private “A peace officer has no authority to issue a citation under state law for an offense on the private streets, and if such a citation is issued, it may not be prosecuted”⁶ This sounds as if the Ivanhoe Property Owners Association is trying to benefit from some of the laws but remain a private subdivision

⁴ Tex. Transp. Code Ann. § 542.007(b) (Vernon 1999).

⁵ Tex. Att'y Gen. Op. No. JC-0016 (1999) at 6. Tex. Transp. Code Ann. § 541.302 (Vernon 1999).

⁶ Id.

and be protected from the laws that prohibits all-terrain vehicles from using public roadways. We believe that this is not possible because the subdivision can chose to have the laws extended but does not want the entire laws enforced. They Commissioners Court by authority can extend any or all traffic regulation but they can not choose which portions will apply. § 542.007 of the Transportation Code does allow for this, the language is clear in that they “may extend any traffic rules that apply to a county road to the roads of subdivisions.”⁷

The problem occurs when the Commissioners Court decides to extend these laws and the Transportation Code which specifically makes the use of all-terrain vehicles illegal on public roadways, then to exempt all-terrain vehicles from the traffic laws of the subdivision would in essence be illegal. The transportation code specifically prohibits these vehicles from the public roadways and the Commissioners Court would be making something legal that the applicable statute makes illegal. Also if the provision were exempted then who would be held responsible if an accident were to occur using these vehicles. The county could be opening itself up for a possible lawsuit, simply for the fact that they have extended the traffic law, provided a sheriff's deputy to enforce these laws and have exempted and made the use of all-terrain vehicles legal.

Under § 663.002 of the transportation code that specifically deals with all-terrain vehicles the legislature has made it clear when and where all-terrain vehicles should be used. This section stated in the rule above states in part that “A person may not operate an all-terrain vehicle on a Public Street, road or highway except as provided by this

⁷ Tex. Transp. Code Ann. § 542.007(b) (Vernon 1999).

section.”⁸ The section lists the exceptions that apply and if used for the purposes that are set out in § 663.002 of the Transportation Code.

CONCLUSION

Since there is no case law on this particular issue we only have the statutes to guide us to a conclusion. We have examined § 663.002 and § 542.007 of the Transportation code and determined that it was the legislative intent to exclude the use of all-terrain vehicles on public roadways. This was done for precautionary reasons since these are not actually vehicles that one may use for everyday travel. The statute provides few exceptions for the use of all-terrain vehicles, none that are applicable to the residents of Ivanhoe. These are vehicles that are not regularly insured by auto insurance companies and since they are not insured then if an accident were to occur the county may be held responsible in case of an accident.

Since the subdivision of Ivanhoe has elected to petition the Commissioner’s Court to extend all or any traffic laws to that subdivision, they have implicitly agreed to all parts of the traffic rules and regulations. The Commissioner’s Court cannot exempt all-terrain vehicles because it is not the Commissioner’s Court that make the laws for the state of Texas. If the Commissioner’s Court were to try and exempt the all-terrain vehicles it would be against the law. We conclude based upon the applicable statutes the Commissioner’s Court does have the authority to extend the traffic rules and regulations as set out by § 542.007, but they can not exempt all-terrain vehicles because the state statute under § 663.002 sets the guidelines for their use.

⁸ Tex. Transp. Code Ann. § 663.002 (Vernon 1999)