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March 14, 2002

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OPINION COMMITTEE

FILE # ML-42524-02
I.D. # 42524

The Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

RQ-0524-JC

RE: Request for Attorney General's Opinion Regarding Freeway Truck Lane
Restrictions under the Texas Transportation Code.

Dear General Cornyn:

The City of Houston and TxDOT have previously established truck restrictions on a portion of I-10 East, which has only three main travel lanes in each direction and was restricted so that trucks may not use the inner lane. *See*: City of Houston Ord. 2000-770. The City of Houston and TxDOT are now in discussion about establishing similar restrictions on a portion of I-45 North, which has four main travel lanes in each direction through most of the area under consideration. The City has drafted an ordinance similar to Ord. 2000-770, which would restrict trucks from the two inner lanes, but TxDOT apparently has traffic engineering concerns that trucks should have use of three of the four lanes in each direction, rather than two.

The City of Houston has provided the enclosed package of materials relating to the adoption of § 545.0651 in 1997. Even though the law was adopted by Senate Bill 773, it actually originated as a Committee Substitute to House Bill 393. The materials provided include both "as filed" and "substitute" versions of the bills, Committee Reports, and transcriptions of the House and Senate Committee hearings. While there may be no patent ambiguity in § 545.0651 that would support a need for resort to legislative history, the history itself does not appear to be of much assistance with respect to this inquiry.



An issue has arisen as to the establishment of truck lane restrictions on freeways by municipalities in cooperation with the Texas Department of Transportation (TxDOT). Specifically, state law allows municipalities to "restrict by class of vehicle, through traffic to two designated lanes" of a highway that "has a minimum of three travel lanes...in each direction." Texas Transportation Code § 545.065(a)(2)(c) & (b) (Vernon 1999).

Based on the foregoing, I respectfully submit the following question for your opinion:

Does the two lane requirement found in Section 545.065 of the Texas Transportation Code literally mean exactly two lanes or should the statute instead be construed as though it reads two or more lanes?

Your prompt opinion on this issue would be greatly appreciated.

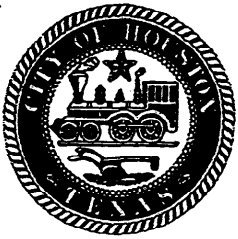
Sincerely,

A handwritten signature in black ink, appearing to read "Hunter Moore". The signature is written in a cursive, slightly slanted style.

JEB: te

cc: Mr. Anthony W. Hall, Jr.
City Attorney
City of Houston
P.O. Box 1562
Houston, TX 77251-1562

Mr John J. Ingram, Jr.
Office of General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, TX 78710-2483



CITY OF HOUSTON

Legal Department

Lee P. Brown

Mayor

January 4, 2002

Mr. John J. Ingram, Jr.
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RE: Truck restrictions; § 545.0651 Tex. Transp. Code

Dear Jack:

This will follow up on our recent conversation about the interpretation of the State law that allows cities to "restrict by class of vehicle, through traffic to two designated lanes" of a highway that "has a minimum of three travel lanes ... in each direction." TEX. TRANSP. CODE ANN. §545.0651(a)(2)(c) & (b) (Vernon 1999). I share your desire that the law be implemented in a flexible manner. However, the City needs to be on firm ground, because any resulting ordinance will be penal.

Even though the law appears to fairly clearly limit our authority to having two truck lanes, I asked that the legislative history be fully reviewed. I am enclosing what we found. The law passed as a Senate Bill, but the actual text originated as a House Committee Substitute that was later used as a Senate Committee Substitute. Therefore, I am enclosing the whole package from both houses. There was no floor debate in either house, but I have obtained and transcribed the Committee hearings. Even assuming for the sake of argument that the statute is ambiguous, the legislative history does not appear to help. It reads to me as if the adopted text responds to some cement truckers from near Dallas who were trying to be sure that the original House version of the bill, which would have allowed trucks to be restricted to one lane, was revised to give them two lanes. On the Senate side, Senator Lindsay appeared to think the bill would restrict trucks to the left lane.

Please review the materials and advise. Also, please let me know if you intend to request an Attorney General's opinion. The City cannot submit opinion requests directly, but we could go through a friendly legislator if need be.

Sincerely,

Paul Bibler Jr.
Senior Counsel

PRB:asw
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CITY OF HOUSTON

Legal Department

Interoffice

Correspondence

To: Thomas J. Rolen, P.E.
Director
Public Works & Engineering

From: Paul Bibler Jr.

Date: November 7, 2001

Subject: I.H. 45 truck lane ordinance

Based upon the attached correspondence from Gary K. Trietsch, which was forwarded by Council Member Carroll Robinson's office, I have prepared a draft ordinance. This ordinance is based upon my unscientific-nonengineer view of the subject freeway and limited collaboration with Douglas Wiersig, P.E., of your staff.

Mr. Trietsch's letter recommends a control area from I.H. 610 to the city limits near Airtex. There are two problems with this:

- While there is a portion of the city limits that ends near Airtex, part of I.H. 45 between Greens Road and Airtex is not in the City.
- While the focus has been on "no trucks in the left lane," the State law does not actually authorize such an ordinance. Rather, it requires the City Council to designate two lanes to which trucks are restricted. This was not a problem for the I.H. 10 East project, because there are three main travel lanes for the entire distance of the restrictions. The subject portions of I.H. 45 are not so simple. There is a small area at the I.H. 610 overpass where the freeway has three main travel lanes. It then expands to four main travel lanes out through the vicinity of the Beltway 8/Greens Road interchange where it becomes five lanes.

In order to resolve the foregoing issues, I have prepared the draft ordinance with the restricted area commencing at a point one-half mile north of I.H. 610 and ending at Greens Road. The restriction would apply to the two left lanes, and the two right lanes would be open to trucks.

Please review the draft ordinance very carefully and advise regarding any changes or corrections that you may desire.

Paul Bibler Jr.
Senior Counsel

PRB:asw
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Attachment

cc: Council Member Carroll G. Robinson
Sally G. Wegmann, P.E., TxDOT
Chief C. O. Bradford
Douglas Wiersig, P.E.



Texas Department of Transportation

P.O. BOX 1386 • HOUSTON, TEXAS 77251-1386 • (713) 802-5000

November 2, 2001

CONTACT: DTO

The Honorable Lee P. Brown
Mayor, City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

Dear Mayor Brown:

This is to acknowledge receipt of your letter dated October 29, 2001, requesting that the Department expand the truck lane use restriction program to IH 45 (North) from north of IH 610 to the city limits (before Airtex) as well as SH 225.

As the proposed limits of IH 45 (North) are within the jurisdictional limits of the City of Houston, the Department can immediately address this request. This stretch of roadway was included in the Texas Transportation Institute's initial study regarding truck lane use restrictions. Their evaluation concluded that this roadway section met the necessary criteria as required by the applicable statute.

The Houston Police Department's level of commitment to enforcement was a key component to the success of the IH 10 East effort, and we would consider this a fundamental requirement as well as for the success of any implementation on the IH 45 corridor.

One of the other lessons learned from our IH 10 effort was that signing was extremely important. In order to address this aspect, we would hope to partner with the City to provide improved signage on both corridors.

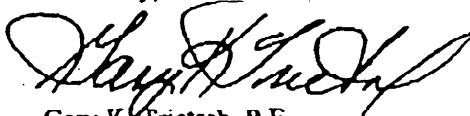
In accordance with the procedures specified in 43 TAC 25.601-25.603, please provide the Department with a copy of the proposed ordinance, documentation of the public notification of the public hearing, as well as verification of the required public hearing including a written transcript of any public comments received concerning the proposed ordinance. We can assist you with the requirements for two original plan views of the roadway and a complete description of the proposed restriction. Upon receipt of this information, your request will be forwarded to our Traffic Operations Division in Austin for further review and handling. This will include the necessity of posting the proposed ordinance in the Texas Register for public comment. If comments received warrant further public consideration, the Department may conduct a public hearing. Approval by the Department's Executive Director must be obtained prior to implementation.

We will process the request for consideration of SH 225 upon receipt of confirmation of support from the adjacent cities.

The Honorable Lee P. Brown
November 2, 2001
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Should you need any additional assistance with this issue, please contact Ms. Sally G. Wegmann, P.E., Director of Transportation Operations, at (713) 802-5171 or e-mail

Sincerely,



Gary K. Trietsch, P.E.
District Engineer
Houston District

cc: Ms. Sally G. Wegmann, P.E.
