

KEITH G. ALLEN  
First Assistant

TERRI TIPTON HOLDER  
Chief - Criminal Division



JIM WIGINTON  
Chief - Civil Division

JOHN BLANKENSHIP  
Chief Investigator

**JERI YENNE**  
**CRIMINAL DISTRICT ATTORNEY**  
**BRAZORIA COUNTY**

**RECEIVED**

**SEP 18 2003**

**OPINION COMMITTEE**

September 16, 2003

FILE # ML-43258-03

I.D. # 43258

**RQ-0105-GA**

Honorable John Cornyn  
Attorney General  
Attention: Susan Gusky  
Opinions Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

**Re: Request for Attorney General Opinion**

Dear Attorney General Cornyn:

As Criminal District Attorney of Brazoria County, I seek your opinion regarding whether a violation of Section 545.420 of the Texas Transportation Code (Racing on highway) is delinquent conduct as defined by Section 51.03 of the Texas Family Code or is it a traffic offense as defined by Section 51.02(16) of the Texas Family Code and, therefore, excepted from the jurisdiction of the juvenile court.

**I.**

**FACTUAL BACKGROUND**

Pursuant to Section 51.03 of the Texas Family Code, traffic offenses are generally excepted from juvenile court jurisdiction. Section 51.02 of the Texas Family Code defines "traffic offense" as a violation of a penal statute cognizable under Chapter 729, Transportation Code, except for conduct constituting an offense under Transportation Code Sections 521.457 (driving while license invalid), 550.021 (accident involving personal injury or death), 550.022 (accident involving damage to vehicle, if Class B Misdemeanor), 550.024 (duty on striking unattended vehicle, if Class B Misdemeanor), and 550.025 (duty on striking fixture or highway landscaping, if Class B Misdemeanor).

Those penal statutes cognizable under Chapter 729, Transportation Code are Transportation Code Chapters 502, other than 502.282 (repealed effective 09/01/03) and 502.412 (operation of vehicle at weight greater than stated in registration application); 521, other than 521.457 (driving while license invalid); Subtitle C, other than an offense punishable by imprisonment or by confinement in jail under 550.021 (accident involving personal injury or death), 550.022 (accident involving damage to vehicle), 550.024 (duty on striking unattended vehicle) and 550.025 (duty on striking fixture or highway landscaping); 601; 621; 661; and 681.

COUNTY COURTHOUSE, 111 E. LOCUST, SUITE 408A. ANGLETON, TEXAS 77515

Angleton Area  
(979) 864-1230

Brazosport Area  
(979) 388-1230

Houston Area  
(281) 756-1230

Fax-Criminal Division  
(979) 864-1525

Fax-Civil Division  
(979) 849-8914

Effective September 1, 2003, the offense of "racing on highway", found in Section 545.420 of the Texas Transportation Code, has a penalty range of Class B Misdemeanor to a 2<sup>nd</sup> degree Felony, depending on circumstances and injuries.

## II. ISSUES PRESENTED

1. Is a violation of Section 545.420 of the Texas Transportation Code a "traffic offense" as defined in Section 51.02(16) of the Texas Family Code?
2. Is a violation of Section 545.420 of the Texas Transportation Code "delinquent conduct" as defined in Section 51.03 of the Texas Family Code?
3. Is a violation of Section 545.420 of the Texas Transportation Code "conduct indicating a need for supervision" as defined in Section 51.03 of the Texas Family Code?
4. Is a violation of Section 545.420 of the Texas Transportation Code referred to juvenile court, a justice of the peace court, or a municipal court?

## III. DISCUSSION OF ISSUES

1. Texas Family Code Section 51.02 (16) defines "traffic offense" as a violation of a penal statute cognizable under Chapter 729 of the Transportation Code, except for certain specifically stated violations of Sections none of which are or encompass Section 545.420. Subtitle C of the Transportation Code, which does encompass Section 545.420, is made cognizable under Chapter 729. Chapter 729 excepts certain specifically stated Sections from Subtitle C, however, Section 545.420 is not one of them. It would appear Section 545.420 of the Texas Transportation Code is not a stated exception to the definition of "traffic offense" as defined in the Texas Family Code and, therefore, is a "traffic offense".
2. Texas Family Code Section 51.03 defines "delinquent conduct" as "conduct, **other than a traffic offense**, ....." If you adhere to the discussion in my response to question 1, it appears that a violation of Transportation Code Section 545.420 is a traffic offense and, therefore, not delinquent conduct.
3. Texas Family Code Section 51.03 defines "conduct indicating a need for supervision" as ".... conduct, **other than a traffic offense**, ....." If you adhere to the discussion in my response to question 1, it appears that a violation of Transportation Code Section 545.420 is a traffic offense and, therefore, not conduct indicating a need for supervision.

4. Same response to questions 1, 2 and 3. If a violation of Transportation Code Section 545.420 is neither delinquent conduct nor conduct indicating a need for supervision due to it falling within those offenses deemed "traffic offenses", jurisdiction is in either a justice court or municipal court. If this is the case, it is conceivable that a justice and/or municipal court could be charged with the responsibility of handling cases against juveniles charged with offenses ranging from a Class B Misdemeanor to a Felony of the 2<sup>nd</sup> degree.
5. Would you please reconcile the conflict of Section 729.001 of the Texas Transportation Code, which includes Subtitle C offenses, as it pertains to the new Section 545.420 (racing on highways).

Very truly yours,

  
JERI YENNE

am