

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

August 10, 2006

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OPINION COMMITTEE

FILE # ML - 44943-0

I.D. # 44943

The Honorable Greg Abbott
Attorney General of Texas
209 West 14th Street
Austin, Texas 78701

Certified Mail #70051820000317231392

Return Receipt Requested

RQ-0522-GA

Re: Request for Attorney General Opinion Regarding Transcripts in Administrative Driver's License Suspension Appeals

Dear Attorney General Abbott:

The State Office of Administrative Hearings ("SOAH") conducts administrative driver's license suspension hearings pursuant to TEX. TRANSP. CODE ANN. Chapters 524 and 724. The mechanism for appeals of the decisions issued by the SOAH Administrative Law Judges in the cases is prescribed in TEX. TRANSP. CODE ANN. §§ 524.041 and 724.047. Section 524.043 of the Transportation Code states that the review on appeal is "on the record certified by the State Office of Administrative Hearings," and SOAH's rule at 1 TEX. ADMIN. CODE § 159.37(e) states that the record shall include "(5) a transcription of the proceedings electronically recorded by" SOAH. (The hearings on the merits in the administrative driver's license suspension cases are recorded on audiotape from which a transcription can be made.) The statutory scheme addresses the payment for transcripts of the hearing for the appeal. Under TEX. TRANSP. CODE ANN. § 524.044, the party appealing the decision must apply to SOAH for the transcript, and upon payment of a fee not to exceed the actual cost of preparing the transcript, SOAH furnishes both parties a copy. SOAH's rule at 1 TEX. ADMIN. CODE § 159.37(f) implements § 524.044. The transcript fee is paid to SOAH, but the payment is a "pass-through," *i.e.*, SOAH immediately pays the transcription service.¹ Beyond this payment mechanism, SOAH is not funded to provide transcripts in these cases.

A defendant appealing his driver's license suspension in Nueces County has filed his appeal petition *in forma pauperis* in the county court. He has requested that SOAH provide him a free transcript for the appeal pursuant to TEX. R. CIV. P. 145.

SOAH respectfully requests your opinion on the following question:

Is SOAH required to provide a free transcript to a defendant in an appeal of a final order issued by a SOAH Administrative Law Judge in an administrative driver's license suspension case pursuant to TEX. TRANSP. CODE ANN. § 524.041, where the defendant has filed his appeal petition *in forma pauperis* with the appellate court and has requested that SOAH provide him a free transcript pursuant to TEX. R. CIV. P. 145?

¹ SOAH does not have court reporters on its staff.

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SOAH has received similar requests within the last year in three other administrative driver's license suspension cases. On all three occasions, SOAH has maintained that the plain language of the statute and its rule implementing the statute require the appealing party to pay for the transcripts, and that SOAH is not funded to provide free transcripts to those who assert indigence in the appellate court.

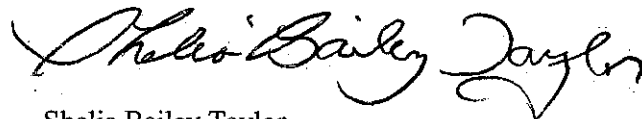
SOAH is an executive branch agency performing a quasi-judicial function pursuant to statute. Our concern arises from the interplay of TEX. TRANSP. CODE ANN. Chapter 524 and the rules and statutes applicable to the judicial branch, *i.e.*, TEX. R. CIV. P. 145 specifically and the Texas Rules of Civil Procedure generally.

Neither the pertinent provisions of the Transportation Code nor SOAH's rules adopts the Texas Rules of Civil Procedure. It is not clear to us whether, despite the specificity of the applicable provisions of the Transportation Code to the administrative driver's license suspension appeals, the Texas Rules of Civil Procedure apply once the case is appealed to the applicable constitutional court from SOAH. It is also not clear to us that TEX. R. CIV. P. 145, with its reference to the "costs of an original action," applies to a proceeding that is an appeal. (We note that SOAH is not a party to the administrative driver's license suspension appeal, although the statute provides that SOAH is to receive a copy of the petition for appeal. *See* TEX. TRANSP. CODE ANN. § 524.041(c).)

We also do not know if the providing of a free transcript to the defendant for the appeal would run afoul of the constitutional provision found in TEX. CONST. art. 16, § 6(a) prohibiting the expenditure of public money for private purposes. SOAH receives funding to conduct the administrative driver's license suspension hearings from State Highway Fund 006; the funding is designated for hearings and does not provide that it may be used to pay for transcripts for defendants appealing an administrative driver's license suspension who file an affidavit on indigency with the appellate court. At the risk of being repetitive, we note again that funding for transcripts is addressed in TEX. TRANSP. CODE ANN. § 524.044, and it requires payment of the transcript fee by the party appealing the suspension.

Thank you for your kind attention to this matter. If we may provide you with additional information, we would be glad to do so.

Sincerely,



Shelia Bailey Taylor
Chief Administrative Law Judge

c: Mr. Randy Mack, Attorney at Law, 2001 S. Staples, Suite 100, Corpus Christi, Texas 78404 - Regular Mail
Texas Department of Public Safety, 1922 S. Padre Island Drive, Corpus Christi, Texas 784416 - Regular Mail
The Honorable Cathleen Parsley, General Counsel, SOAH - Hand Delivery