



Texas Department of Transportation

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July 10, 2009

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OPINION COMMITTEE

FILE # ML-46115-09
I.D. # 46115

The Honorable Greg Abbott
Texas Attorney General
Attn: Opinions Committee
P.O. Box 12548
Austin, Texas 78711

RQ-0811-GA

RE: Whether the Justices of the Peace have authority to issue motor vehicle titles in certain situations

Dear General Abbott:

As the state record holder of vehicle title records, the Texas Department of Transportation would like to request an opinion regarding whether the Code of Criminal Procedure, Art. 47, authorizes a justice of the peace or a municipal judge to award a certificate of title for a motor vehicle and whether Government Code, §27.031 authorizes a justice of the peace to award a certificate of title through the enforcement of a lien.

Article 47.02 involves the disposition of stolen property. Prior to September 1, 1997, Art. 47.02, stated that upon trial or pending trial, a justice of the peace or municipal judge could award that property be restored to the proven owner.

Article 47.02 was amended by HB 2592, Acts of the 75th Legislature, Regular Session, 1997, by adding the following distinction regarding certificates of title:

As to property subject to the Certificate of Title Act (Chapter 501, Transportation Code), any magistrate having jurisdiction in the county in which the criminal action is pending may hold a hearing to determine the right to possession of the property, even if a criminal action is pending, upon written consent of the prosecuting attorney.

This carved out a "right to possession," award which may be interpreted as different from ownership.

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Art. 47.01 provides that if a criminal action relating to allegedly stolen property is not pending, a justice of the peace or a municipal judge, having jurisdiction as a criminal magistrate, may hold a hearing to determine the right to possession, and order the property delivered to whoever has the superior right to possession, without conditions.

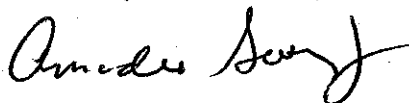
Does "without conditions" mean that the judges may award a certificate of title?

In addition, we would like the court to resolve whether a justice of the peace may award a certificate of title through the enforcement of a lien. Government Code, §27.031, governing jurisdiction of a justice court, states that the justice court has original jurisdiction for foreclosure of mortgages and enforcement of liens on personal property in cases in which the amount in controversy is not more than \$10,000. Assuming the vehicle at issue is not valued at more than \$10,000, may a justice of the peace award possession and title of the vehicle?

Transportation Code, §501.052, provides that original jurisdiction is in county court in certain instances. An applicant aggrieved by the determination by a county tax assessor collector as to a refusal, suspension, or revocation of title may "appeal to the county court of the county of the applicant's residence."

Persons awarded a certificate of title by a justice of the peace or a municipal court can appeal to a county court if the application for title is refused on jurisdiction issues. We request an opinion as to whether the department may accept the court order from a justice of the peace and the municipal court within their jurisdiction or whether it must go to the county court.

Sincerely,



Amadeo Saenz, Jr., P.E.
Executive Director