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**OPINION COMMITTEE**

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CRIMINAL DISTRICT ATTORNEY  
BRAZORIA COUNTY

FILE # ML-47011-12  
I.D. # 47011

April 5, 2012

**RQ-1052-GA**

Honorable Greg Abbott  
Attorney General of Texas  
Opinion Division  
P.O. Box 12548  
Austin, Texas 78711-2548

*Via Certified Mail, Return Receipt Requested*

Dear General Abbott:

Pursuant to Texas Government Code, § 402.043, the Brazoria County District Attorney's Office respectfully submits this request for the Attorney General's opinion concerning clarification for § 551.403 of the Texas Transportation Code.

By way of background, in 2009, the Texas Legislature passed § 551 et seq of the Texas Transportation Code regarding the operation of golf carts. § 551.403 reads as follows:

- (a) An operator may operate a golf cart:
  - (1) in a master planned community:
    - (A) that has in place a uniform set of restrictive covenants; and
    - (B) for which the county or municipality has approved a plat;
  - (2) on a public or private beach; or
  - (3) on a public highway for which the posted speed limit is not more than 35 miles per hour, if the golf cart is operated:
    - (A) during the daytime; and
    - (B) not more than two miles from the location where the golf cart

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is usually parked and for transportation to or from a golf course.

- (b) The Texas Department of Transportation or a county or municipality may prohibit the operation of a golf cart on a public highway if the department or the governing body of the county or municipality determines that the prohibition is necessary in the interest of safety.

TEX. TRANS. CODE ANN. § 551.403 (Vernon 2009).

This law was enacted in 2009. The term “master planned community” is not defined in this statute or in any other place in Texas law. The closest definition is within the Local Government Code for “planned community” which defines it as a planned community subject in whole or in part to a restrictive covenant that contains an ad valorem based assessment on real property that is used to fund, in any part, governmental or quasi governmental services and facilities within the planned community. See TEX. LOCAL GOV'T CODE 43.0753 & 43.0754

The only definitions given in § 551 are for the terms “golf cart,” “utility vehicle” and “public highway.” “Golf cart” and “public highway” are given the definitions assigned to them by § 502.001 of the Transportation Code. “Golf cart” under § 502.001 is defined as “a motor vehicle designed by the manufacturer primarily for use on a golf course.” “Public highway” under § 502.001 is defined as “a road, street, way, thoroughfare, or bridge:

- (A) that is in this state;
- (B) that is for the use of vehicles;
- (C) that is not privately owned or controlled; and
- (D) over which the state has legislative jurisdiction under its police power.”

TEX. TRANS. CODE § 502.001

## QUESTIONS PRESENTED

1. What is the definition of a “master planned community” for the purpose of this statute?

2. If a person is operating a golf cart in a “master planned community” within the boundaries of § 551.403 (a)(1), does that then render the boundaries of § 551.403 (a)(3) moot? In other words, if a person is legally operating a golf cart in a master planned community, does this mean that the restrictions of subsection (a)(3) regarding the posted speed limit of the road, the time of day, the usual parking location of the golf cart or the requirement about the golf cart going to and from a golf course no longer apply?

3. Under § 551.403 (a) (3) (B), if the operator of the golf cart is not in a master planned subdivision, however, the operator is on a public highway, operating the golf cart during the daytime and operating it within two miles of where the golf cart is usually parked, does the operator still have to be going to and from a golf course for the operation of the golf cart to be legal?

#### **ARGUMENT & AUTHORITIES**

Based on a reading of § 551.403(a)(1), the legislature intended for the operation of a golf cart in a master planned community to be legal. However, the term “master planned community” is not defined in this statute nor is there a cross reference to another definition in another statute. § 551.403(a)(1)(A) and (B) place qualifiers that in order for the operation of the golf cart in the master planned community to be legal, the master planned subdivision must have in place a uniform set of restrictive covenants and have an approved plat by the county or municipality. Are these qualifiers what the legislature intended to be the all encompassing definition of “master planned community” for the purposes of this statute? Or, for a subdivision to qualify as a master planned community for the purposes of this statute, does it need to possess more qualifiers, such as having one developer, a clubhouse, a playground, landscaped medians or a community swimming pool?

The second issue is whether or not these § 551.403(a)(1) & (3) operate independently of each other? Under subsection (a)(3), golf carts can be legally operated on a public highway if the speed limit is not in excess of 35 mph and if the golf cart is operated in the daytime and is

being operated no more than 2 miles from the location where the golf cart is usually parked and is being used for transportation to or from a golf course. This seems to imply that if a person is legally operating a golf cart in a master planned subdivision, then it doesn't matter if it's being operated in the daytime or nighttime, what the posted speed limit of the road is, or if the operator is going to and from a golf course. The question is whether or not these subsections operate independently of each other?

Lastly is whether or not all aspects of the § 551.403 (3) must be met for the legal operation of a golf cart. In other words, if the operator of the golf cart is not in a master planned subdivision, however, the operator is on a public highway, operating the golf cart during the daytime and operating it within two miles of where the golf cart is usually parked, does the operator always have to be going to and from a golf course for the operation of the golf cart to be legal?

This office is looking forward to your response to this request for your opinion on the foregoing questions. Please let me know if you would like any further briefing.

Sincerely,



**JERI YENNE**