

JO ANNE BERNAL
 EL PASO COUNTY ATTORNEY
 500 EAST SAN ANTONIO
 ROOM 503, COUNTY COURTHOUSE
 EL PASO, TEXAS 79901
 (915) 546-2050
 FAX: (915) 546-2133

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 FILE # ML-48584-19
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July 17, 2019

The Honorable Ken Paxton
 Texas Attorney General
 Attn: Opinion Committee
 P.O. Box 12548
 Austin, Texas 78711-2548

CERTIFIED MAIL
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 7018 1830 0001 1333 5257

RE: Questions regarding the County Scofflaw Statute, Texas Transportation Code, §502.010

Dear Mr. Attorney General:

I am soliciting your opinion on behalf of the El Paso County Tax Assessor-Collector. My questions to you are as follows:

1. For counties lacking an information sharing agreement with the department of motor vehicles under Texas Transportation Code §502.010(b), are Subsections (b-1), (c), (d), (e), and (f) inapplicable?
2. In what circumstances, if any, do scofflaw remarks relating to Failure to Appear expire on the second anniversary of when the information was provided to the local county tax assessor-collector under Texas Transportation Code §502.010?
3. Would a political subdivision's contract under Texas Transportation Code §706.002 have any effect upon the County's duties under Texas Transportation Code §502.010?

Background

The El Paso County Tax Assessor-Collector has asked the El Paso County Attorney's Office to answer a number of questions relating to the implementation of the changes that were made to Texas

Transportation Code §502.010 by Senate Bill 1913 from the regular session of the 85th Legislature in 2017.

In 2017, the State of Texas updated §502.010 of the Texas Transportation Code – County Scofflaw through Senate Bill 1913. This bill took effect September 1, 2017. The legislative intent behind these changes was to give Judges more discretion in dealing with defendants who are unable to pay fees and fines due to indigence, as well as to help indigent individuals avoid further criminal and civil consequences relating to their inability to pay.¹ Subsection 502.010(b-1) of the Texas Transportation Code sets the timeframe during which certain information can and cannot be used to deny vehicle registration. Below is the full text of Texas Transportation Code §502.010:

(a) Except as otherwise provided by this section, a county assessor-collector or the department may refuse to register a motor vehicle if the assessor-collector or the department receives information that the owner of the vehicle:

- (1) owes the county money for a fine, fee, or tax that is past due; or
- (2) failed to appear in connection with a complaint, citation, information, or indictment in a court in the county in which a criminal proceeding is pending against the owner.

(b) A county may contract with the department to provide information to the department necessary to make a determination under Subsection (a).

(b-1) Information that is provided to make a determination under Subsection (a)(1) and that concerns the past due status of a fine or fee imposed for a criminal offense and owed to the county expires on the second anniversary of the date the information was provided and may not be used to refuse registration after that date. Once information about a past due fine or fee is provided under Subsection (b), subsequent information about other fines or fees that are imposed for a criminal offense and that become past due before the second anniversary of the date the initial information was provided may not be used, either before or after the second anniversary of that date, to refuse registration under this section unless the motor vehicle is no longer subject to refusal of registration because of notice received under Subsection (c).

(c) A county that has a contract under Subsection (b) shall notify the department regarding a person for whom the county assessor-collector or the department has refused to register a motor vehicle on:

- (1) the person's payment or other means of discharge, including a waiver, of the past due fine, fee, or tax; or
- (2) perfection of an appeal of the case contesting payment of the fine, fee, or tax.

(d) After notice is received under Subsection (c), the county assessor-collector or the department may not refuse to register the motor vehicle under Subsection (a).

(e) A contract under Subsection (b) must be entered into in accordance with Chapter 791, Government Code, and is subject to the ability of the parties to provide or pay for the services required under the contract.

(f) Except as otherwise provided by this section, a county that has a contract under Subsection (b) may impose an additional fee of \$20 to:

- (1) a person who fails to pay a fine, fee, or tax to the county by the date on which the fine, fee, or tax is due; or

¹ Senate Bill 1913, 85th Session of the Texas Legislature, Bill Analysis.

(2) a person who fails to appear in connection with a complaint, citation, information, or indictment in a court in which a criminal proceeding is pending against the owner.

(f-1) The additional fee may be used only to reimburse the department or the county assessor-collector for its expenses for providing services under the contract, or another county department for expenses related to services under the contract.

Legal Analysis

The first sentence of Tex. Trans. Code §502.010(b-1) states that “[i]nformation that is provided to make a determination under Subsection (a)(1) and that concerns the past due status of a fine or fee imposed for a criminal offense and owed to the county expires on the second anniversary of the date the information was provided and may not be used to refuse registration after that date.” The use of the word “provided” in this sentence can be read two different ways. One reading would be the dictionary meaning of the word “provided,” which means “to make available; furnish.”² Under that reading, the first sentence does not specify the source of said information, and as such, would apply to all information given to the Tax Assessor-Collector from any source. The second reading of the word “provided” would be to read it as a reference to Subsection (b) where the word “provide” is used in the context of a specific relationship between the Texas Department of Motor Vehicles (TxDMV) and a county. Because the first sentence of Subsection (b-1) does not reference Subsection (b), whereas the second sentence of Subsection (b-1) does reference Subsection (b), it appears that the legislature has made a distinction as to which sentences in Subsection (b-1) are related to Subsection (b). As such, our office interprets the first sentence of Subsection (b-1) as being applicable to all counties, regardless of whether or not Subsection (b) applies to a particular county.

The second sentence of §502.010(b-1) deals with information about a past due fine or fee provided under Subsection (b). Subsection (b) relates to the county’s ability to contract with the “department” for information sharing relating to scofflaw remarks. Per Texas Transportation Code §502.001, the term “department” is defined as TxDMV. As such, it appears that the only sentence in §502.010(b-1) that is applicable to counties that lack information sharing agreements with TxDMV is the first sentence, which deals with expiration, two years after receipt, of information relating to “the past due status of a fine or fee imposed for a criminal offense and owed to the county.” The second sentence of Subsection (b-1), and Subsections (c), (e), and (f), appear to be contingent upon Subsection (b), and Subsection (d) appears to be contingent upon Subsection (c), which appears to be contingent upon Subsection (b). This leads to the first question above regarding the applicability of these subsections.

The first sentence of Tex. Trans. Code §502.010(b-1) states that “[i]nformation that is provided to make a determination under Subsection (a)(1) and that concerns the past due status of a fine or fee imposed for a criminal offense and owed to the county expires on the second anniversary of the date the information was provided and may not be used to refuse registration after that date.” Subsection 502.010(a)(1) applies to a vehicle owner who “owes the county money for a fine, fee, or tax that is past due.” This subsection does not address a failure to appear, as that is governed by §502.010(a)(2). To the extent that such a fine or fee has been imposed after an adjudication of guilt for the criminal offense of Failure to Appear, §502.010(a)(1) seems applicable; however, beyond that, §502.010(b-1) does not

² Dictionary.com www.dictionary.com/browse/provide. Accessed on 15 July 2019.

appear to deal with registration refusals relating to Failure to Appear. The Texas Department of Motor Vehicles released a bulletin entitled "Waiver for Indigent Scofflaws," which is dated July 24, 2017 and attached to this request. This bulletin states, "[a]dditionally, Senate Bill 1913 specifies a scofflaw remark applied as a result of Failure to Appear for a fine or fee expires on the second anniversary of when the information was provided to the local county tax assessor-collector...." This apparent conflict is what leads to our second question above regarding whether Failure to Appear scofflaw remarks are affected by this law.

As mentioned above, the definition of "department," as used in Texas Transportation Code §502.010(b) means the Department of Motor Vehicles. The tenor of that subsection relates to information conveyed to the department that is necessary for determining whether a scofflaw remark applies. Texas Transportation Code §706.002 deals with a very similar concept, whereby through an information sharing agreement, a county provides information for the purpose of denying renewal of a driver's license.

Sec. 706.002. CONTRACT WITH DEPARTMENT.

(a) A political subdivision may contract with the department to provide information necessary for the department to deny renewal of the driver's license of a person who fails to appear for a complaint or citation or fails to pay or satisfy a judgment ordering payment of a fine and cost in the manner ordered by the court in a matter involving any offense that a court has jurisdiction of under Chapter 4, Code of Criminal Procedure.

(b) A contract under this section:

- (1) must be made in accordance with Chapter 791, Government Code; and
- (2) is subject to the ability of the parties to provide or pay for the services required under the contract.

One major distinction between Sections 502.010 and 706.002 of the Texas Transportation Code is that the term "department," as used in Section 706.002, and as defined in Texas Transportation Code §706.001, means the Department of Public Safety. Thus, although there is likely a large amount of overlap between the data that would be provided to the State under both sections, we read the law to indicate that an agreement under Texas Transportation Code §706.002 would have no bearing on the applicability of various parts of Texas Transportation Code §502.010. Instead, we believe that the existence or non-existence of an agreement with the Department of Motor Vehicles under Texas Transportation Code §502.010(b) alone would determine the applicability of various subsections within §502.010. The third question above is meant to determine whether the Office of the Attorney General agrees with this reading of the law, or whether it has a different interpretation relating to these sections.

Conclusion

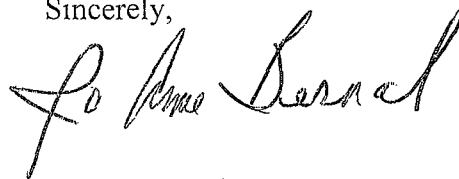
Our reading of the law in relation to the application of Texas Transportation Code §502.010 is that a county lacking an information sharing agreement with the Texas Department of Motor Vehicles would only be subject to the requirements found in the first sentence of Texas Transportation Code §502.010(b-1), and that the remainder of the subsections would not apply. It is also our opinion that any agreement between a county and the Texas Department of Public Safety under Texas Transportation Code §706.002

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would have no bearing on this conclusion. Furthermore, we conclude that Failure to Appear scofflaw remarks under Texas Transportation Code §502.010(a)(2) are unaffected by Texas Transportation Code §502.010(b-1), and as such, not subject to expiration under this section.

Thank you for your attention to this matter. I respectfully request your opinion regarding these issues.

Sincerely,

A handwritten signature in cursive script that reads "Joanne Bernal". The signature is written in black ink and is positioned above the printed name.

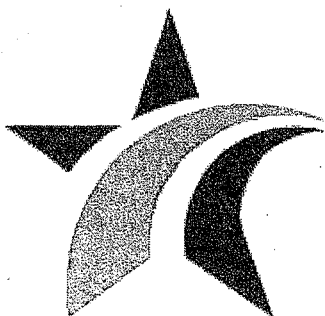
Joanne Bernal
El Paso County Attorney

Attachment

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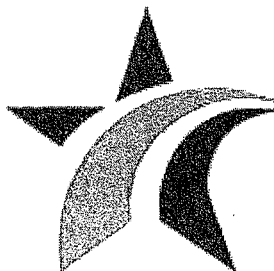


Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Waiver for Indigent Scofflaws

Texas Department of Motor Vehicles sent this bulletin at 07/24/2017 09:30 AM CDT



Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Please review and distribute as appropriate.

Currently, a county tax assessor-collector may refuse to register a motor vehicle if a scofflaw is on the motor vehicle record. During the 85th Legislative Session, Senate Bill 1913 passed amending the circumstances in which registration can be denied.

Senate Bill 1913, effective September 1, 2017, amends Transportation Code, Section 502.010, specifying a county tax assessor-collector cannot deny registration to an individual found to be indigent by a court with jurisdiction over the offense. Senate Bill 1913 provides that a waiver provided by a court with jurisdiction over an offense must be accepted as a type of discharge by a county tax assessor-collector as proof the fine or fee is resolved. A court with jurisdiction over an offense for an indigent individual must alert the county tax assessor-collector the motor vehicle registration may not be refused.

Additionally, Senate Bill 1913 specifies a scofflaw remark applied as a result of a failure to appear for a fine or fee expires on the second anniversary of when the information was provided to the local county tax assessor-collector and may not be used to refuse registration after that date. County tax assessor-collectors who maintain a scofflaw program will be responsible for ensuring expired scofflaws are removed from the motor vehicle record in accordance with this provision. It is important county tax assessor-collectors contracted with the department notify the department to remove the scofflaw remark upon receiving notification from a court with jurisdiction.

Thank you,

Jeremiah Kuntz, Director
Vehicle Titles and Registration Division
Texas Department of Motor Vehicles


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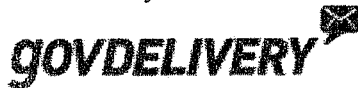


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