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JIM MURPHY

Member

HOUSE OF REPRESENTATIVES

District 133 • Harris County

6/26/20

Sent via Email

Office of the Attorney General
Attention: Opinion Committee
opinion.committee@oag.texas.gov

Dear Attorney General Paxton:

Pursuant to Texas Government Code Section 402.042, I respectfully request your opinion as to the following question:

1. May the Metropolitan Transit Authority of Harris County, Texas ("METRO") prohibit service and access to its transit authority system to a person who refuses to comply with a METRO rule requiring all persons (who are medically capable of doing so) to wear face coverings on METRO vehicles, facilities or properties, without conflicting with or imposing restrictions inconsistent with Executive Order GA-18 or other executive orders issued in response to COVID-19?

Background

This is a request for an opinion concerning the legal authority of the Metropolitan Transit Authority of Harris County, Texas ("METRO") to prohibit service and access to its transit authority system to a person who refuses to comply with a METRO rule that requires all persons (who are medically capable of doing so) to wear face coverings on METRO vehicles, facilities or properties.

METRO is the metropolitan rapid transit authority serving the Houston region, including 14 smaller cities and major portions of unincorporated Harris County, with bus, rail, and paratransit transportation services. METRO was created in 1978 for a public purpose and as a matter of public necessity, pursuant to Texas Transportation Code §451.001, et. seq. METRO is governed by a statutorily authorized board that has responsibility for the management, operation, and control of the authority and its property. Tex. Transp. Code. §451.053. The METRO Board is authorized to adopt rules by resolution for the safe and efficient operation and maintenance and use of the transit

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authority system. The METRO Board may also regulate privileges on the system through such rules. Tex. Transp. Code §451.107.

In 2015, the METRO Board adopted a rule establishing a Code of Conduct For Persons on METRO Vehicles, Facilities, or Properties (“Code of Conduct”) for the safety, convenience, and experience of all persons.¹ As noted in the Code of Conduct, the METRO Police Department, through its peace officers authorized under Texas Transportation Code §451.108, may issue a verbal or written warning, an immediate suspension from service, or a longer suspension from service that is appealable, to a person who commits a violation.

During the current outbreak of the contagious respiratory virus known as coronavirus, or COVID-19, METRO has continued to provide vital public transportation services, enabling persons who provide essential services and other workers to report to duty.

In response to COVID-19, the Centers for Disease Control and Prevention (“CDC”) has recommended wearing cloth face coverings in public settings especially in areas of significant community-based transmission.² Further, in its “CDC Activities and Initiatives Supporting the COVID-19 Response and the President’s Plan for Opening America Up Again,” the CDC specifically advised Mass Transit Administrators to enforce the use of a cloth face covering by employees and to communicate with the public about the importance of using cloth face coverings while using mass transportations.³

Consistent with CDC recommendations, on April 27, 2020, in Executive Order GA-18, Governor Abbott indicated that “Individuals are encouraged to wear appropriate face coverings, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering.”⁴ The Governor’s order supersedes “any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts essential services or reopened services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list of essential services or the list or scope of reopened services as set forth in this executive order,” and suspends “any other relevant statutes, to the extent necessary to ensure

¹ <https://www.rideMETRO.org/Pages/MPDCodeOfConduct.aspx>

² <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>;
<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>

³ <https://www.cdc.gov/coronavirus/2019-ncov/downloads/php/CDC-Activities-Initiatives-for-COVID-19-Response.pdf>

⁴ https://gov.texas.gov/uploads/files/press/EO-GA-21_expanding_Open_Texas_COVID-19.pdf



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that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with” Executive Order GA-18.

I request that your office provide a legal opinion on the question presented. Although I understand that your office has at least 180 days to issue an opinion in this matter, because of the exigent circumstances and public safety implications of the matter, I respectfully request that you issue an opinion as soon as possible.

I appreciate your time and attention to this matter. Please contact me should you need further information.

Sincerely,

A handwritten signature in cursive script that reads "Jim Murphy".

