July 1, 2006

The Honorable Greg Abbott
Attorney General of Texas
Post Office Box 12548
Austin, TX 78711-2548

Re: Request for an opinion as to whether Texas counties can require overweight vehicles permitted under Chapter 623, Transportation Code, to obtain additional permits from the counties in which they operate.

Dear General Abbott:

It has come to my attention that various counties, mostly in east Texas, have implemented programs requiring overweight vehicles to obtain permits before operating within their respective counties. The operators of these trucks already possess what are known as "2060 permits" for overweight trucks issued by the Texas Department of Transportation. As you know, many of my constituents make a living from harvesting and transporting timber to mills across east Texas. This recent outbreak of duplicative regulations has become exceedingly burdensome to the livelihood of many in the forest products industry as well as others who operate similarly-sized vehicles.

Based on my understanding of the law, I do not believe these counties, as well-intentioned as they may be, have the authority to require a local permit in addition to the one issued by the state. As such, I hereby request your assistance and official opinion regarding this matter.

Discussion

Chapter 251, Texas Transportation Code, titled "General County Authority Relating to Roads and Bridges," provides the authority for counties to create, construct, maintain and classify county roads. Section 251.016 states that a county "may exercise general control over all roads, highways, and bridges in the county."

In addition to this general authority over roads, Section 251.153 says that a county "may establish load limits for any county road or bridge in the manner prescribed by Section 621.301 [Transportation Code]."

Chapter 621, Transportation Code, titled "General Provisions Relating to Vehicle Size and Weight," says that a county "may establish load limits for any county road or bridge only with the concurrence of the department."[1] According to Section 621.301(e), "vehicles operating

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[1] TEX. TRANSP. CODE ANN. §621.301.

under a permit issued under Section 623.011," Transportation Code, are exempt from the weight limits established by a county under this Subchapter.

Chapter 623, Transportation Code, was enacted by the Legislature in 1989 as part of House Bill 2060, which has led to the use of the moniker "2060 permits." Chapter 623 provides for a statewide system of permitting overweight trucks and as stated in Section 621.301(e), trucks operating with 2060 permits are exempt from weight limits established by counties under the authority of either Chapter 251 or Chapter 621, Transportation Code.

Chapter 623 does, however, give counties the authority to permit overweight trucks in addition to their general authority to set weight limits, but it does not give the county authority to require a vehicle with a 2060 permit to obtain an additional permit:

> (d)   If a vehicle has a permit issued under section 623.011, a commissioners court may not:
>
> > (1)   issue a permit under this section or charge an additional fee for or otherwise regulate or restrict the operation of the vehicle because of weight; or
> >
> > (2)   require the owner or operator to execute or comply with a road use agreement or indemnity agreement, to make a filing or application, or to provide a bond or letter of credit other than the bond or letter of credit prescribed by Section 623.012.[2]

Given the myriad of statutes granting counties authority over roads, including the ability to establish weight limits and issue permits for overweight trucks, it is understandable how they could be misconstrued. Nonetheless, Section 623.018(d) clearly states that if a truck has a 2060 permit, the county has no authority to require an additional permit.

This very issue was addressed by the Houston Court of Appeals in *Scurlock Permian Corp. v. Brazos County*.[3] In 1991, Brazos County enacted traffic regulations limiting the weight of vehicles on county roads to 58,420 and providing for the issuance of permits for trucks that exceed this limit. Scurlock was a crude oil company that obtained 2060 permits for all of its trucks. Upon receiving multiple citations for not having Brazos County permits, Scurlock sought injunctive relief and a declaration that state law preempted the ability of the County to require separate permits.[4]

The Court held that the County Road and Bridge Act addresses the general authority of counties to regulate traffic and roads, while article 6701d-11 (now codified as §623.011, Transportation Code) specifically authorizes the state to issue overweight truck permits and

grants the counties limited authority to grant such permits. Therefore, article 6701d-11 prevails over the County Road and Bridge Act.[5]

Additionally, based on the limitations provided by Section 2(b)(1) (now Section 632.018(d), Transportation Code), the Court held that "if the State has issued a 2060 permit to such a vehicle, a county may not require that vehicle to have a county permit. Put another way, a vehicle with a valid 2060 permit does not have to get a Brazos County overweight permit."[6] We have been unable to find a case with a contradictory holding.

It is also noteworthy that in 1991, the Attorney General issued an opinion in which he observed that House Bill 2060 "expressly limited a county's power to enforce load zoning regulations against vehicles operating under a section 5B [2060] permit." and quoted Section 623.018(d) which prohibits a county from requiring an additional permit.

Conclusion

Our analysis of the law leads us to believe that counties are prohibited from requiring a truck to obtain a local permit in addition to the 2060 permit. The confusion over this area of the law in some Texas counties has placed significant burdens on the logging industry and others whose businesses depend on overweight trucks and machinery. As such, I respectfully request your assistance in clarifying this matter at your earliest convenience.

Sincerely,

Todd Staples
Senate District 3

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[5] *Id.*, at 486.

[6] *Id.*, at 487.

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