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

Re: Whether ATPA funds may be used to investigate theft of heavy equipment and related questions

Dear General Abbott:

The Automobile Theft Prevention Authority (ATPA) is established by Article 4413(37) (Act). Section 10(b) of the Act assesses a fee on an "Insurer," or insurance company, of "\$1 multiplied by the total number of motor vehicle years of insurance for insurance policies delivered, issued for delivery, or renewed by the company for the preceding calendar year." See art. 4413(37) §10(b). The revenue collected from this fee is used, in part, to fund grants primarily to local law enforcement agencies for activities such as enforcement/apprehension and prosecution/adjudication relating to auto or vehicle theft, public education, prevention of stolen auto parts sales and reduction of stolen vehicles moved across the Mexico border. Some of our grantees have inquired whether they may use ATPA funds to investigate the theft of heavy equipment which they believe falls within the scope and purpose of the ATPA's mission. For the purposes of this letter, heavy equipment means self-propelled farm equipment, construction equipments, boats or airplanes. On behalf of the ATPA, I am requesting your opinion on this issue.

ATPA Rule 57.48 describes the types of vehicles and the types of insurance that are presently subject to the statutory fee. 43 Tex. Admin. Code § 57.48(a). Section 10 of the Act defines the terms "Insurer" and "motor vehicle years of insurance." It does not further define the types of vehicles or the type of insurance policies that the legislature intended to be covered. §§10(a)(1) and (2). The definition of "Insurer," means any insurance company that writes any form of "motor vehicle insurance." The ATPA has interpreted "motor vehicle insurance" and "motor vehicle" as used in the Act to refer to the

Insurance Code's definition of motor vehicle insurance in article 5.01(e) of the Insurance Code. The fee is assessed on "all motor vehicle or automobile insurance policies," with certain exceptions. Rule 57.48(a)(4).

Article 5.01(e) describes motor vehicle insurance as covering any "automobile, motorcycle, motor bicycle, truck, truck-tractor, tractor, traction engine, or any other self-propelled vehicle, and including also every vehicle, trailer or semi-trailer pulled or towed by a motor vehicle, . . ."

According to the Texas Department of Insurance staff, article 5.01(e) covers other self-propelled vehicles such as off road dune buggies, all terrain vehicles, golf carts, and mobile equipment. Mobile equipment includes forklifts, bulldozers, power cranes, shovels, loaders, diggers, or drills, and other vehicles that travel on crawler treads, road construction or resurfacing equipment such as graders, scrapers or rollers, and other equipment not self-propelled and are maintained primarily to provide mobility to permanently attached equipment. TDI staff tells us that such mobile equipment is generally covered under a general liability policy; however, if there is no general liability policy, it is permissible to write the mobile equipment under an auto liability policy. Similarly, self-propelled farm equipment, such as tractors, harvesting combines, power driven lawn mowers and other self-propelled equipment used for farming purposes may be insured under a general liability policy or an auto policy. A vehicle of any type insured under an automobile liability insurance policy would be considered a covered automobile under article 5.01(e) and thus, subject to Rule 57.48. TDI staff does not consider mobile equipment to include boats, airplanes. Boats are insured under inland marine policies and airplanes under aviation policies.

The following questions are posed:

1. May the ATPA adopt a rule defining the term "any other self-propelled vehicle" to include self-propelled farm equipment, construction equipment, boats or aircraft?"
2. In order to assess the \$1 fee on such vehicles, would they have to be insured under a motor vehicle or automobile insurance policy, or may the ATPA amend Rule 57.48(a)(4) to include other types of insurance that cover heavy equipment?
3. Does the ATPA's enabling statute permit ATPA funds to be used to fund projects provided in Rule 57.14(b) that include or focus on thefts of self-propelled farm equipment, construction equipment, boats and aircraft?

With regard to the last question, the purposes that ATPA funds may be used are set out in article 4413(37) § 8. Sections 7 and 9 of the Act also set out activities and programs that the Legislature has directed the ATPA

to carry out. Section 7 directs the ATPA to assess and develop a plan "to combat automobile theft and economic automobile theft." Section 9 directs the ATPA and the Department of Public Safety to operate a statewide automobile registration program, which is the state's HEAT Program.

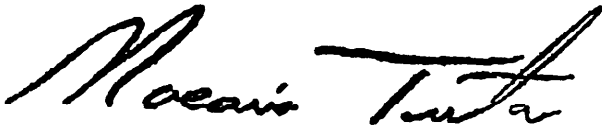
See <http://www.dot.state.tx.us/atpa/programs/index.htm>.

Section 8 authorizes the ATPA to provide financial support to law enforcement agencies for economic automobile theft enforcement teams. The ATPA implements this responsibility through its annual grant program. 43 Tex. Admin. Code §§ 57.1 through 57.44.

The ATPA has not restricted its activities to passenger cars. ATPA's grant programs throughout Texas are not limited to activities relating only to theft of passenger cars. Law enforcement auto theft units typically investigate thefts of vehicles of all types, including those that are self-propelled or towed, registered or un-registered. Stolen vehicles investigated by auto theft units include pick-up trucks, motorcycles, buses, tractors, trailers, semi-trailers, and construction and farm equipment. Auto theft units do not attempt to differentiate vehicles by type. The HEAT Program enrolls any vehicle fitting the definition of what is considered a TxDOT registered motor vehicle (with the exception of motorcycles). This would include passenger cars, buses, 18-wheelers, vans, trucks, motor homes. Even if ATPA is restricted to collecting the ATPA fee on motor vehicle or automobile policies, those policies cover a wide range of vehicles other than just passenger cars. This interpretation of the scope of the ATPA's enabling Act, we believe, is reasonable in light of the range of vehicles insured and subject to the ATPA fee, the broad scope of ATPA's mission set out in its Act, and the nature of the problem to be addressed by the ATPA and its local law enforcement grantees.

Thank you for your assistance. If further information is required, please contact the ATPA Director, Susan Sampson, at (512) 374-5104. You may also discuss this request with Brenda Loudermilk, Assistant Attorney General, 5-4292, who provides the ATPA with legal counsel.

Sincerely,

A handwritten signature in black ink, appearing to read "Mac Tristan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mac Tristan
Chairman

CC: **Members, ATPA**
Susan Sampson, Director
Brenda Loudermilk, OAG