

Matthew Poston
County Attorney

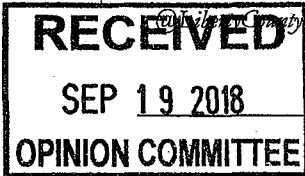
Matthew.Poston
@LibertyCountyCAO.com



1923 SAM HOUSTON ST.
STE. 202, LIBERTY, TX 77575

P: 936.336.4650
F: 936.336.4658

RQ-0251-KP



September 10, 2018



Office of the Attorney General of Texas
Attention: Opinion Committee
PO Box 12458
Austin, TX 78711-2548

FILE # ML-48441-18

ID. # 48441

RE: Authority of County Law Enforcement to Enforce County Weight Regulations on
County Roads

Dear General Paxton,

The Liberty County Attorney's Office seeks an opinion on the authority of county law enforcement officers to enforce county weight limitations on county roads. These questions, discussed more fully below are:

- 1) Must a local law enforcement officer, be certified by the Texas Department of Public Safety (pursuant to Texas Administrative Code § 4.56 (b)) in order to enforce weight restrictions on county roads under Texas Transportation Code § 251.153? 37 TEX. ADMIN. CODE § 4.56 (Lexis Advance through all regulations in effect as of August 31, 2018) (TEX. DEPT. OF PUB. SAFETY, Uniform Weighing Procedures for Weight Enforcement Officers); TEX. TRANSP. CODE § 251.153 (LexisNexis, Lexis Advance through the 2017 Regular Session and 1st C.S., 85th Legislature.)
- 2) If not, can the Department of Public Safety otherwise revoke a county law enforcement officer's authorization granted by the county commissioners court under Texas Transportation Code § 251.153? TEX. TRANSP. CODE § 251.153.
- 3) Is the "authorization" given by a commissioners court under the Texas Transportation Code § 251.153 identical to the "authority" described by Texas Transportation Code § 621.402(e)? TEX. TRANSP. CODE § 251.153; TEX. TRANSP. CODE § 621.402(e) (LexisNexis, Lexis Advance through the 2017 Regular Session and 1st C.S., 85th Legislature.)

A Short History of Enforcement of Liberty County Weight Restrictions on County Roads

In 2001, the Texas Legislature enacted Transportation Code § 251.153, which provides, "The commissioners court may authorize a county traffic officer, sheriff, deputy sheriff, constable or deputy constable to weigh a vehicle to ascertain whether the vehicle's load exceeds

the limit prescribed by the commissioners court.” TEX. TRANSP. CODE § 251.153. Based on this new authority, Liberty County Commissioners Court granted authorization to the Liberty County Constable of Precinct 2 to enforce weight restrictions on county roads. The Constable’s office was also granted the duty to administer the overweight permit program and to document the condition of roads before and after projects involving permitted travel over county roads. Precinct 2 Constable’s Office continued to administer this program under successive administrations until 2016, when DPS forbade the officers from its training.

In 2015, the legislature amended §621.402, adding the following language:

(e) The Department of Public Safety:

- (1) shall establish by rule uniform weighing procedures for weight enforcement officers to ensure an accurate weight is obtained for a motor vehicle; and
- (2) may revoke or rescind the authority of:
 - a. a weight enforcement officer who fails to comply with those rules; or
 - b. weight enforcement officers of a municipal police department, sheriff’s department, or constable’s office that fails to comply with those rules. Tex. Transp. Code §621.402.

Under this newly granted rule-making authority, the Department of Public Safety (hereinafter, “DPS”) responded by adopting §4.56 of the Texas Administrative Code, which requires that “law enforcement agencies employing weight enforcement officers” send their officers for “certification” by DPS after successfully completing “weight enforcement training”. 37 TEX. ADMIN. CODE § 4.56.

The Pct. 2 Constable’s office understood this new training and certification requirement to apply to them and perhaps mistook their authority to partake in a common source with “weight enforcement officers”. Pct. 2 applied to the DPS weight enforcement training and was denied access because the Pct. 2 Constable and his deputies did not qualify as “weight enforcement officers”. See TEX. TRANSP. CODE § 621.401 (LexisNexis, Lexis Advance through the 2017 Regular Session and 1st C.S., 85th Legislature) (Defining “weight enforcement officer” to exclude “constable or deputy constable [unless] designated under Section 621.4015,” the requirements of which Liberty County cannot meet.) In response, various stakeholders formulated a new program that would meet the terms of §621.401 but also use existing personnel.

Under this program, the existing personnel—the constable and his deputies—would assume a second commission as sheriff’s deputies and their exercise of weight enforcement responsibilities would be subject to the sheriff’s supervision and to the sheriff’s department command structure. Other requirements were contemplated to ensure faithful execution of the law. Your office agreed that the Transportation Code would not be offended by this proposal. TEX. ATT’Y GEN. OP. KP-0189 (2017.) However, DPS disagreed.

In response to the opinion of your office, DPS issued memoranda of understanding to all Texas local law enforcement agencies forbidding the certification of dual-commissioned officers who were not full-time employees of the agency with statutory authority pursuant to §621.401. TEX. TRANSP. CODE § 621.401. This confronts Liberty County with the question: must any local law enforcement agency who is “authorized” by the Commissioners Court under Texas Transportation Code, Chapter 251 be “certified” under Texas Transportation Code, Chapter 621 and Texas Administrative Code § 4.56(b)?

The Goal is Local Enforcement of Local Regulations

Liberty County seeks enforcement of weight restrictions on county roads—not state highways. State highways generally are more durably constructed, designed for higher traffic loads and therefore, have higher weight restrictions. Compare TEX. TRANSP. CODE § 621.101 (LexisNexis, Lexis Advance through the 2017 Regular Session and 1st C.S., 85th Legislature) (“The overall gross weight on a group of two or more consecutive axles may not be heavier than 80,000 pounds.”), with Center for Transportation Research, *Effects of Truck Size and Weights on Highway Infrastructure and Operations: a Synthesis Report* (March 2001), https://ctr.utexas.edu/wp-content/uploads/pubs/2122_1.pdf (“County roads remain mostly at a standard of 58,420 lb or less”.)

County roads, by contrast, are neither constructed to the same standards nor designed to accommodate the weight or frequency of travel that state highways carry. Financially speaking, counties could never pay the full cost of county road construction. In Liberty County, the annual materials budget for each of the four precincts is roughly equivalent to the amount necessary to construct approximately 2 miles of road. Typically, counties are able only to maintain roads constructed by private developers. Counties exercise discretion in the adoption of public roads into the county maintenance system. Substandard development of a road imperils the adoption of road into the county maintenance system. Liberty County does not seek state enforcement of state-regulated weight restrictions on state highways.¹ The state highways need less protection, owing to their greater strength.

Nor does Liberty County seek *state* enforcement of weight restrictions on county roads. State law enforcement, namely DPS, would be far too understaffed to address such local problems. Of the 50,989 full-time law enforcement officers in the State of Texas in 2016, only 3831 worked for DPS. TEX. DEPT. OF PUBLIC SAFETY, *Crime in Texas*, Ch. 8, at 1 (2017), <http://www.dps.texas.gov/crimereports/16/citCh8.pdf>. Liberty County competes for troopers’ time with 35 other counties in the same DPS commercial motor vehicle district. See TEX. DEPT. OF PUBLIC SAFETY, THP-10, at 2, (2015), <http://www.dps.texas.gov/tle/THP-10.pdf>. DPS cannot be the only solution to the problem of weight enforcement on county roads.

¹ The issue of county authority to regulate weight restrictions on state highways is well-settled by several Attorney General’s Opinions: the county has no authority. TEX. ATT’Y GEN. OP. Nos. JC-0517 (2002), GA-0088 (2003), GA-0509 (2007).

Liberty County seeks *county* enforcement of *county* weight restrictions on *county* roads. Our problem suggests its own solution: local law enforcement. But the need cannot justify the action and any solution must comport with the limits set by law.

THE LAW

Commercial Motor Vehicle Safety Standards Enforcement Distinguished

While there is considerable overlap between commercial vehicle safety standards enforcement and weight enforcement, the two are distinct. These overlaps are generally in the areas of officer qualifications to be a weight enforcement officer, training and rule-making authority. Municipal police officers that serve populations who fall in numerous, subtly delineated population brackets, may gain status as weight enforcement officers when they receive certification in commercial vehicle enforcement safety standards enforcement. The inverse is not true: commercial motor vehicle safety enforcement does not derive from weight enforcement.

Difficulties in distinguishing weight enforcement from commercial vehicle enforcement are compounded by the fact that training by DPS for the two types of enforcement appear to be merged into one training class: Basic Commercial Vehicle Enforcement. TEX. HOUSE COMM. TRANSP., 1st Sess. (March 2, 2017) (<https://capitol.texas.gov/tlodocs/85R/handouts/C4702017030208001/08c21b5b-1361-41f5-9c60-5c6277fb3504.PDF>) (“DPS required each weight enforcement officer... go through a 40-hour basic commercial vehicle enforcement course in 2016.”) If an agency wanted to enforce weight restrictions alone, its officers would have to attend training that would not apply and would still have to report its commercial vehicle enforcement activity, nonexistent though it may be.

Chapter 251 Gives Authority Independent of Chapter 621

The types of law enforcement officers that Chapter 251 allows to enforce weight restrictions is far more inclusive than Chapter 621 and contains none of the limiting language that is found in Chapter 621, such as jurisdictions falling within certain population brackets. In one particular instance, county traffic officers may be granted authority to weigh vehicles, something that a prior Attorney General’s opinion interprets as not being supported by Chapter 621’s predecessor. TEX. TRANSP. CODE § 251.153 (authorizing the appointment of “county traffic officer”); *but see* TEX. ATT’Y GEN. OP. No. 0-1510 (1939) (concluding “the power given county traffic officers...to enforce the highway laws of this State...cannot be extended to include the authority to weigh loaded vehicles.”)

In short, county traffic officers are granted authority under Chapter 251 and given no such authority under Chapter 621. *See* TEX. TRANSP. CODE § 621.401, § 621.4015 and § 644.101. There is no way to reconcile both of these chapters if the powers given by the two chapters are the same power.

The only reasonable interpretation of Chapters 251 and 621 that gives full weight to all terms in the statutes and that comports with the demonstrable intent of the legislature is an

interpretation that segregates the authorities granted to law enforcement in Chapter 251 from Chapter 621. That is, Chapter 251 and Chapter 621 should only be read to create two authorities: first, a county-wide enforcement authority limited to enforcing county regulations on county roads; secondly, a state-wide enforcement authority that expansively gives authority to state *and* local law enforcement the ability to enforce state *and* local regulations.

The greatest indicators of the distinction in weight enforcement power come from the jurisdictional language of the statutes themselves. For instance, § 251.153(b) can only be interpreted as an enforcement provision of the very load limits described in paragraph (a). Those load limits are strictly limited to “any county road or bridge.” TEX. TRANSP. CODE § 251.153(a) (LexisNexis, Lexis Advance through the 2017 Regular Session and 1st C.S., 85th Legislature.)

It may also regulate speeds *on county roads* (§251.154), institute no-parking zones *on county roads* (§251.156,) and require the use of traffic control devices *on county roads* (§251.155). *See also* TEX. TRANSP. CODE § 251.151(a) (“The commissioners court of a county may regulate traffic on a county road or on real property owned by the county that is under the jurisdiction of the commissioners court.”) This section makes no reference to the population brackets or other criteria found in Chapters 621 or 622 that qualify certain law enforcement officers to be “weight enforcement officers”. Nothing in Chapter 251, or elsewhere for that matter, allows these regulations or enforcement to overlap onto state highways.

Texas Transportation Code, Chapter 621, on the other hand, grants enforcement to “weight enforcement officers... weight enforcement officers have *exclusive authority to enforce this subchapter* in any area of the state, including all ports of entry between Texas and the United Mexican States”. TEX. TRANSP. CODE § 621.408 (LexisNexis, Lexis Advance through the 2017 Regular Session and 1st C.S., 85th Legislature.) (Emphasis added.)

With very few exceptions, Chapters 621 and 622 regulate the use of *public highways*, that is, state-maintained roads.² It is clear from Texas Bill Analysis, the legislature had in mind the roads the legislature would have to maintain. 2001 Bill Text TX S.B. 220 (“Currently, Texas law prohibits the loading and unloading of a vehicle exceeding certain weight limitations for operation on a *state highway*, and requires the loading to be observed by an authorized officer in order to enforce this provision.”) (Emphasis added.)

² *See, inter alia*, TEX. TRANSP. CODE § 622.953 (LexisNexis, Lexis Advance through the 2017 Regular Session and 1st C.S., 85th Legislature) (regulating the maximum gross weight of a “single motor vehicle used to transport seed cotton” and “chile pepper modules” without regard to roads used and assessing liability to “state, county, or municipality for any damage to a highway, street, road or bridge caused by the weight of the load”); *also* TEX. TRANSP. CODE § 622.061 (LexisNexis, Lexis Advance through the 2017 Regular Session and 1st C.S., 85th Legislature) (regulating length of “vehicle or combination of vehicles [used] exclusively for the transportation of poles or pipe” “over a highway or road of this state”); *also* § 622.0435 (LexisNexis, Lexis Advance through the 2017 Regular Session and 1st C.S., 85th Legislature) (regulating the dimensions and weight of vehicles carrying “raw wood products” without limitation to location).

Chapter 621 and Chapter 622 prohibit, among other behaviors:

- “A vehicle or combination of vehicles” from operating “over or on a public highway or at a port-of-entry between Texas and the United Mexican States” if its single axle weight, tandem axle weight or overall gross weight exceeds certain amounts. TEX. TRANSP. CODE §621.101 (LexisNexis, Lexis Advance through the 2017 Regular Session and 1st C.S., 85th Legislature) (Emphasis added.)
- “A ready-mixed concrete truck” from operating “on a public highway of this state. . . if the tandem axle weight” exceeds a certain amount. TEX. TRANSP. CODE § 622.012 (LexisNexis, Lexis Advance through the 2017 Regular Session and 1st C.S., 85th Legislature) (Emphasis added.)
- “A vehicle used exclusively to transport milk” from operating “on a public highway of this state” if the front wheel and forward tandem axle are not a certain distance apart. TEX. TRANSP. CODE § 622.031 (LexisNexis, Lexis Advance through the 2017 Regular Session and 1st C.S., 85th Legislature) (Emphasis added.)

The repeated focus of Chapter 621 is on the enforcement of weight restrictions on state roads. Rule-making authority is vested in state agencies to enforce Chapters 621 and 622.³ What authority is given to commissioners courts is limited to “county roads” and the statute demarcates between the county’s regulation of the “maximum weights to be moved on or over a county road, bridge, or culvert” and the TxDOT’s regulation of “maximum weights on highways and roads to which [Section 621.102] applies.” TEX. TRANSP. CODE § 621.301(a) and (b).

Chapter 251 Authority

A commissioners court has broad but defined powers to regulate traffic on county roads. The commissioners court “may establish load limits for any county road or bridge”. TEX. TRANSP. CODE §251.153(a). A public hearing must be held for which there must be 7 to 30 days public notice before these regulations can be passed. To enforce these local regulations, the commissioners court may also “authorize a county traffic officer, sheriff, deputy sheriff, constable, or deputy constable to weigh a vehicle to ascertain whether the vehicle’s load exceeds the limit prescribed by the commissioners court.” TEX. TRANSP. CODE §251.153(b).

Chapter 621 Authority

“...[A] weight enforcement officer who has reason to believe that the axle or gross weight of a loaded motor vehicle is unlawful may weigh the vehicle using portable or stationary scales furnished or approved by the Department of Public Safety.” TEX. TRANSP. CODE

³Rule-making authority governing weight enforcement and commercial vehicle enforcement is split between state agencies: DPS, the Department of Motor Vehicles (hereinafter “DMV”), and the Department of Transportation (hereinafter “TxDOT”). The DMV board is given the authority to “adopt rules necessary to implement and enforce” Chapter 621. Tex. Transp. Code § 621.008; §621.001 (defining “board” to mean “the board of the Texas Department of Motor Vehicles”). DPS is given rule-making authority over establishing procedures to ensure “accurate weight” measurements of vehicles. Tex. Transp. Code §621.402. TxDOT, on the other hand is responsible for determining the weight limits of the roads themselves. Tex. Transp. Code §621.102.

§621.402. "All weight enforcement officers must have attended and successfully completed weight enforcement training provided by [DPS] prior to certification." 37 TEX. ADMIN. CODE § 4.56. DPS "may revoke or rescind the authority of. . . a weight enforcement officer who fails to comply" with rules DPS is authorized to issue establishing "uniform weighing procedures for weight enforcement officers". TEX. TRANSP. CODE §621.402.

Under Texas Transportation Code § 621.401, a weight enforcement officer is defined as:

- (1) A license and weight inspector of the Department of Public Safety;
- (2) A highway patrol officer;
- (3) A sheriff or sheriff's deputy;
- (4) A municipal police officer in a municipality with a population of:
 - (A) 100,000 or more; or
 - (B) 74,000 or more in a county with a population of more than 1.5 million;
- (5) A police officer certified under Section 644.101; or
- (6) A constable or deputy constable designated under Section 621.4015.⁴

TEX. TRANSP. CODE § 621.401(LexisNexis, Lexis Advance through the 2017 Regular Session and 1st C.S., 85th Legislature.)

A constable or deputy constable may only be designated under Section 621.4015 in a county:

- (1) That is a county with a population of 1.5 million or more and is within 200 miles of an international border; or
- (2) That is adjacent to a county with a population of 3.3 million or more; and
- (3) In which a planned community is located that has 20,000 or more acres of land, that was originally established under the Urban Growth and New Community Development Act of 1970 (42 U.S.C. Section 4501 et seq.); TEX. TRANSP. CODE § 621.4015.

⁴ Liberty County constables and their deputies do not qualify under TEX. TRANSP. CODE § 621.4015. "A county commissioners court may designate a constable or deputy constable of the county as a weight enforcement officer in a county: (1) that is a county with a population of 1.5 million or more and is within 200 miles of an international border; or (2) that is adjacent to a county with a population of 3.3 million or more; and (3) in which a planned community is located that has 20,000 or more acres of land, that was originally established under the Urban Growth and New Community Development Act of 1970 (42 U.S.C. Section 4501 et seq.), and that is subject to restrictive covenants containing ad valorem or annual variable budget based assessments on real property." TEX. TRANSP. CODE §621.4015. In the 2010 U.S. Census, Liberty County had a population of 75,643.

<https://www.census.gov/quickfacts/fact/table/libertycountytexas/PST045217>. According to Wikipedia, whose reliability the reader may judge, Texas contains just three Urban Growth and New Community Development Act developments: Flower Mound, San Antonio Ranch and the Woodlands, found in Denton County, Bexar County and Montgomery County, respectively. See https://en.wikipedia.org/wiki/National_Urban_Policy_and_New_Community_Development_Act_of_1970.

Likewise, "police officers certified under Section 644.101", perhaps unnecessarily, to enforce commercial motor vehicle safety, also must live in a county with a population that falls within eleven different brackets. TEX. TRANSP. CODE §644.101.

If the authority of a commissioners court to appoint a weight enforcement officer is subject to DPS' authority, a number of confusions arise:

- 1) If "county traffic officers" are appointed under Chapter 251, why are they exempt from the training requirements of Chapter 621 when other officers are not?
- 2) If a constable is appointed under Chapter 251 and lives in a county with a population less than 1.5 million, why would that fact relieve the constable of the same training and certification of Chapter 621? Does that not defeat the purpose of Chapter 621?
- 3) If county traffic officers and certain constables are relieved of the duty of Chapter 644 training, then are they still permitted to enforce the weight requirements of Chapter 621? Or are they permitted only to enforce the weight restrictions of Chapter 251?

Conclusion

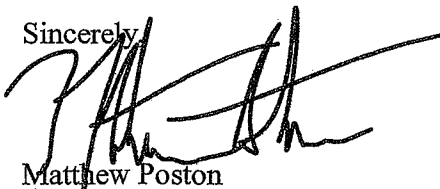
In conclusion, the only rational way to interpret the requirements of Chapter 621 is to interpret them to apply only to Chapter 621, and not Chapter 251. This interpretation would align the source of the funds for the maintenance of the roads with the jurisdiction responsible for its enforcement. Entities responsible for the cost of infrastructure would then be allowed to police that infrastructure. State law enforcement resources would not be consumed for the protecting of county roads.

The byzantine, unnecessary entanglements of commercial motor vehicle regulation would not apply to local entities wishing to protect their roads. Local law enforcement who wish to enforce local regulations would not have to train in the intricacies of laws that are irrelevant to their purpose.

This interpretation would do no violence to the actual words or the intent of the legislature. It would avoid the gymnastics necessary to align the power-granting authorities of the local commissioners courts with DPS, especially where those powers conflict.

Thank you very much for your time and for your opinion. If you have any questions, please don't hesitate to contact me.

Sincerely,



Matthew Poston
County Attorney