



Texas House of Representatives
Committee on Licensing & Administrative Procedures

State Rep. Senfronia Thompson, Chair
Capitol Building, 3S.6 | (512) 463.0798

RECEIVED

By Opinion Committee at 8:03 am, May 21, 2021

May 20, 2021

RQ-0409-KP

FILE# ML-48953-21

I.D.# 48953

Office of the Attorney General
ATTENTION: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

sent via email to: opinion.committee@oag.texas.gov

RE: Attorney General opinion regarding Executive Order No. GA-36

Dear Committee:

Pursuant to 402.042 of the Texas Government Code, I hereby request a formal written opinion regarding the effect of Governor Greg Abbott's May 18, 2021 Executive Order No. GA-36 on the existing federal mask mandate related to face coverings on public transit.

On January 21, 2021, President Joe Biden signed Executive Order No. 13988 – *Executive Order on Promoting COVID-19 Safety in Domestic and International Travel* – which directed transit agencies to require masks to be worn on various modes of transportation, including public transit, in compliance with the Centers for Disease Control and Prevention guidelines. *See* Exec. Order 13988, 86 C.F.R. 7205 (2021).

Subsequently, on January 29, 2021, the Centers for Disease Control and Prevention issued an order requiring persons to wear masks while boarding, disembarking, and traveling on any conveyance in or at any transportation hub that provides transportation within the United States, which has been enforced by the Transportation Security Administration (TSA) through security directives. The TSA's current security directive extends the federal face mask requirement for individuals across all transportation networks throughout the United States, including at airports, onboard commercial aircraft, on over-the-road buses, and on local and commuter bus and rail systems through September 13, 2021. Security Directive from Transp. Sec. Admin. on Security Measures–Mask Requirements (May 12, 2021).

In further support of extending the mask mandate, the Transportation Security Administration, the Centers for Disease Control and Prevention, and the U.S. Department of Transportation issued a joint statement on May 14, 2021, declaring that persons are “still required to wear a mask on planes, buses, trains, and other forms of public transportation traveling into, within, or out of the United States, and in U.S. transportation hubs such as airports and stations.” *See Joint Statement: Mask Mandate on Public Transportation Remains in Effect*, TRANSP. SEC. ADMIN. (May 14, 2021), <https://www.tsa.gov/news/press/statements/2021/05/14/joint-statement-mask-mandate-public-transportation-remains-effect>.

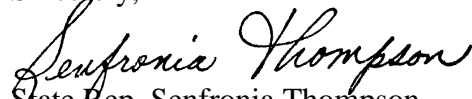
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Subsequently, on May 18, 2021, Governor Abbott issued Executive Order No. GA-36, prohibiting government entities from mandating face coverings or restricting activities in response to the COVID-19 pandemic. The Metropolitan Transit Authority of Harris County, Texas (METRO) currently requires all persons on its transportation system to wear face coverings in accordance with the federal mask mandate requirements.

As Governor Abbott's recent executive order appears to conflict with the federal mask mandate, I seek an opinion to confirm that the latter preempts Executive Order No. GA-36, thereby requiring all persons on METRO's transportation system and property to continue to wear masks until September 13, 2021 (or until otherwise directed by the federal government).

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.

Sincerely,


State Rep. Senfronia Thompson
Chair