



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

November 14, 1947

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of mt 6/21/47
See 27(2)4
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Hon. Alfred M. Clyde
Criminal District Attorney
Fort Worth, Texas

Opinion No. V-429

Re: Authority of the
Commissioners' Court
to promulgate traf-
fic regulations.

Dear Sir:

We refer to your recent letter to this Department which reads in part as follows:

"Section 31 of the Traffic Regulation as enacted by the last Legislature, reads as follows:

"Section 31. LOCAL TRAFFIC - CONTROL DEVICES. (a) Local authorities, in their respective jurisdiction, may place and maintain any traffic-control devices upon any highway under their jurisdiction as they may deem necessary to indicate and carry out the provisions of this Act, or local traffic ordinances, or regulate, warn or guide traffic. All such traffic-control devices hereafter erected shall conform to the State Highway Department's manual and specifications."

"The trustees and patrons of a school known as Indian Oaks, an unincorporated community, have requested the Commissioners Court of Tarrant County to enact or pass an order or restriction fixing the legal rate of speed in the school zone at 20 miles per hour. The State Highway patrolmen have assured the patrons of this school that if the Commissioners Court would enact such a regulation or order that they would enforce it, but I am in doubt as to the authority of the Commissioners' Court to pass any sort of an order regulating traffic, especially if they undertake to attach to such order a penalty for its violation, and if they have no au-

thority to pass an order or resolution fixing the rate of speed or providing a penalty for its violation, then I am fearful that the officer making an arrest for the violation of such an order would not be protected and might be sued for false imprisonment or unlawful arrest. I would therefore appreciate an opinion from you on the following questions:

"(1) Where Subdivision (a) of Section 31 says 'Local authorities, in their respective jurisdiction, may place and maintain any traffic-control devices upon any highway under their jurisdiction as they may deem necessary to indicate and carry out the provisions of this Act, or local traffic ordinances, etc.', would the term 'Local authorities' include a Commissioners' Court, or does it have reference only to local authorities having legislative authority such as City Councils, Boards of Aldermen, etc., which have legislative powers. It has not been my thought that a Commissioners' Court had authority to enact any sort of traffic regulations and affix a penalty for violation of such traffic regulations."

The Regulation Traffic Act in question is Senate Bill No. 172, Acts of the 50th Leg., R.S., 1947.

Article 2351, V.C.S., among other things, provides that the Commissioners' Court shall "exercise general control over all roads, highways, ferries, and bridges in their County."

Section 12 of the Traffic Regulation Act is as follows:

"Sec. 12. Local Authorities. Every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this State."

In Texas Jurisprudence, Vol. 11, p. 563, we find the following:

"Counties, being component parts of the state, have no powers or duties except those

which are clearly set forth and defined in the constitution and statutes. The statutes have clearly defined the powers, prescribed the duties, and imposed the liabilities of the commissioners' courts, the medium through which the different counties act, and from those statutes must come all the authority vested in the counties. . . . The commissioners' court is not vested with any general police power." (Emphasis ours)

Article 6663, V.C.S., is in part as follows:

"The administrative control of the State Highway Department, hereinafter called the Department, shall be vested in the State Highway Commission, hereinafter called the Commission, and the State Highway Engineer. . . ."

Article 6673 provides that:

"The Commission is authorized to take over and maintain the various State Highways in Texas, . . ."

Section 8 of Article 827a, V.P.C., provides in part as follows:

"The State Highway Commission shall have the power and authority upon the basis of an engineering and traffic investigation to determine and fix the maximum, reasonable and prudent speed at any road or highway intersections, railway grade crossings, curves, hills, or upon any other part of a highway, less than the maximum hereinbefore fixed by this Act, taking into consideration the width and condition of the pavement and other circumstances on such portion of said highway as well as the usual traffic thereon. That whenever the State Highway Commission shall determine and fix the rate of speed at any said point upon any highway at a less rate of speed than the maximum hereinbefore set forth in this Act and shall declare the maximum, reasonable and prudent speed limit thereat by proper order of the Commission entered on its minutes, such rate of speed shall become effective and operative at said point on said

highways when appropriate signs giving notice thereof are erected under the order of the Commission at such intersection or portion of the highway.

"That whenever the governing bodies of incorporated cities and towns in this State within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that the maximum reasonable and prudent speed at any intersection or other portion of the highway, based upon the intersections, railway grade crossings, curves, hills, width and condition of pavement and other conditions on such highway, and the usual traffic thereon, is greater or less than the speed limits hereinbefore set forth, said governing bodies shall have the power and authority to determine and declare the maximum reasonable and prudent speed limit thereat, which shall be effective at such intersection or other place."

We concur in the statement in your brief wherein you say that:

". . . the setting up and maintaining of traffic control devices is an exercise of a general police power and is vested either in incorporated cities and towns through which such highways pass, or in the State Highway Commission, and could not be exercised by the Commissioners Court unless such power was granted by the Constitution or statutes. We are of the opinion that the control over roads, highways, etc., as set forth in Art. 2351 has to do with the construction and maintenance of such roads and does not authorize the Commissioners Court to set up rules and regulations for the use of the same."

Therefore, in view of the foregoing, it is the opinion of this Department that the term "local authorities" as used in this Act, does not include Commissioners' Courts but has reference only to those local authorities such as City Councils and Boards of Aldermen which have legislative authority to pass an order regulating

traffic and affixing a penalty, and that the Commissioners' Court of Tarrant County does not have the authority to pass any order regulating traffic in the county and affixing a penalty for violation of such regulation.

We appreciate the brief submitted to this office along with your request.

SUMMARY

The term "local authorities" as used in S. B. 172, Acts of the 50th Leg., R. S., 1947, does not include Commissioners' Courts but has reference only to those local authorities such as City Councils and Boards of Aldermen, which have legislative authority to pass an order regulating traffic and affixing a penalty, and the Commissioners' Court of Tarrant County does not have the authority to pass an order regulating traffic in the county or part of the county and affixing a penalty for violation of such regulation.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Bruce Allen*

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Assistant

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APPROVED:

Rice Daniel
ATTORNEY GENERAL