



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

February 23, 1988

Mr. Charles D. Travis  
Executive Director  
Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744

LO-88-18

Dear Mr. Travis:

We have received your letter of January 21, 1988, requesting an opinion of this office. You ask:

Is it permissive under the enabling statute for the [Parks and Wildlife Department] to issue a certificate of title to a vessel having a valid federal marine document?

The Parks and Wildlife Department issues certificates of title for motorboats and outboard motors by authority of chapter 31, subchapter B-1, of the Parks and Wildlife Code. That subchapter requires certain forms of documentation for most motorboats and outboard motors in the state. The final section of the subchapter, however, provides:

This subchapter does not apply to:

(1) vessels with a valid marine document issued by the Bureau of Customs of the United States or a federal agency that is a successor to the Bureau of Customs;

(2) an outboard motor of less than 12 horsepower as determined by the manufacturer's rating; and

(3) a motorboat 14 feet or less in length.

Parks & Wild. Code §31.055 (emphasis added).

An administrative agency has only those powers expressly granted by statute or necessarily implied from express powers. Stauffer v. City of San Antonio, 344 S.W.2d 158 (Tex. 1961). Thus, the usual reading of the exceptions set out in section 31.055 would be that the Parks and Wildlife Department is neither required nor authorized to issue certificates of title evidencing ownership of the types of vessels listed in section 31.055. Other relevant provisions, however, raise questions about the meaning of the exceptions set out in section 31.055.

Section 31.045 of the Parks and Wildlife Code, the first section of subchapter B-1, provides:

(a) The ownership of a motorboat or of an outboard motor is evidenced by a certificate of title issued by the department, unless the motorboat or the outboard motor is new.

(b) The ownership of a new motorboat or a new outboard motor is evidenced by a manufacturer's or an importer's certificate executed on a form prescribed by the department.

(c) The ownership of a vessel, other than a motorboat more than 14 feet long, or of an outboard motor, other than an outboard motor having a manufacturer's rating of 12 or more horsepower, may, but is not required to be, evidenced by a certificate of title issued by the department, unless the vessel or outboard motor is new.

(d) The ownership of a new vessel, other than a motorboat more than 14 feet long, or of a new outboard motor, other than an outboard motor having a manufacturer's rating of 12 or more horsepower, may, but is not required to be, evidenced by a manufacturer's or importer's certificate executed on a form prescribed by the department. (Emphasis added.)

Section 31.045 allows the Department of Parks and Wildlife to issue certificates of title evidencing ownership of outboard motors of less than 12 horsepower and motorboats 14 feet or less in length, even though such vessels are expressly excepted from the coverage of subchapter B-1 by

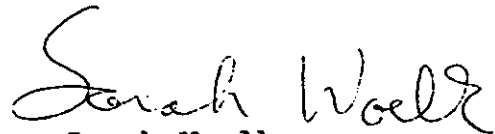
Mr. Charles D. Travis  
February 23, 1988  
Page 3

section 31.055. Thus, section 31.045(c) raises questions about the scope of the exceptions set out in section 31.055, particularly the exceptions for outboard motors of less than 12 horsepower and motorboards 14 feet or less in length.

Both section 31.045 and section 31.055 were adopted in their present form in 1977 as part of the same bill. Acts 1977, 65th Leg, p. 1256, ch. 484. The prior law, however, which contained the same three exceptions as those set out in section 31.055, did not contain a provision making permissive the issuance of certificates of title to evidence ownership of outboard motors of less than 12 horsepower or motorboats 14 feet or less in length. See Acts 1975, 64th Leg., ch. 481, p. 1286. Thus, because the substance of section 31.045 was enacted later in time than the substance of section 31.055, we conclude that, to the extent of conflict, the provisions of section 31.045 prevail over the provisions of section 31.055. Therefore, the department may issue certificates of title to evidence ownership of such vehicles.

There is, however, nothing in the relevant provisions that conflicts with the general exception set out in section 31.055 for vessels with a valid federal marine document. Such vessels were excepted from the coverage of the 1975 version of the certificate of title provision, and nothing was added in the 1977 version to make permissive the issuance of certificates of title evidencing ownership of such vessels. Therefore, we conclude that the Department of Parks and Wildlife has no authority to issue a certificate of title evidencing ownership of a vessel with a valid federal marine document.

Yours very truly,



Sarah Woelk  
Assistant Attorney General  
Opinion Committee

SW/bc

2710, 2810