

Legal Q&A

By Heather M. Lockhart, TML Assistant General Counsel

Q. Who is authorized to drive a police vehicle?

A. Generally, only police officers should drive police vehicles. A city should have policies in place that specify in what limited circumstances other city employees may operate police vehicles.

Q. Is a police officer required to obtain and maintain a commercial driver's license to operate an emergency vehicle?

A. No, a police officer is not required to obtain or maintain a commercial driver's license in order to operate an emergency vehicle. The Transportation Code defines a commercial driver's license as a "license issued to an individual that authorizes the individual to drive a class of commercial motor vehicle." TEX. TRANSP. CODE § 522.003(3). A commercial motor vehicle is a motor vehicle used to transport passengers or property that: "(A) has a gross combination weight or a gross combination weight rating of 26,001 or more pounds, including a towed unit with a gross vehicle weight or a gross vehicle weight rating of more than 10,000 pounds; (B) has a gross vehicle weight or a gross vehicle weight rating of 26,001 or more pounds; (C) is designed to transport 16 or more passengers, including the driver; or (D) is transporting hazardous materials." TEX. TRANSP. CODE § 522.003(5).

Although an emergency vehicle could be classified as a commercial vehicle according to the Transportation Code definition, the Texas Commercial Driver's License Act specifically exempts "a fire-fighting or emergency vehicle necessary to the preservation of life or property or the execution of emergency governmental functions, whether operated by an employee of a political subdivision or by a volunteer fire fighter" from the definition of commercial vehicle. TEX. TRANSP. CODE § 522.005.

Q. May a police officer allow a councilmember or other member of the public to participate in a "ride-along" in a police vehicle?

A. Yes. However, if a city chooses to allow a member of the public to ride in a police vehicle with an officer, the city should have clear policies in place that include a background check and require the individual to sign a waiver before participating in the ride-along.

Q. What is an authorized emergency vehicle?

A. An emergency vehicle is a fire department or police vehicle; a city department or public service corporation emergency vehicle that has been designated or authorized by the city council; or a private vehicle of a volunteer firefighter or a certified emergency medical services employee or volunteer when responding to a fire alarm or medical emergency. TEX. TRANSP. CODE § 541.201(1).

The term "police vehicle" means a vehicle used by a peace officer for law enforcement purposes that is owned or leased by a city or is a private vehicle owned or leased by the peace officer and

is approved for use for law enforcement purposes by the police chief. TEX. TRANSP. CODE § 541.201(1). A private police vehicle is not considered an authorized emergency vehicle unless it is equipped with signal lamps that are mounted as high and widely spaced as practicable, display four alternately flashing red lights at the front and the rear, and emit light visible from 500 feet away. TEX. TRANSP. CODE § 547.702. An authorized emergency vehicle may also be equipped with a siren, exhaust whistle, or bell that is approved by the department and emits a sound audible 500 feet away. *Id.*

Q. When should the emergency signals on a vehicle be used?

A. A police officer must use the vehicle's siren, whistle, or bell when necessary to warn other vehicle operators or pedestrians of the approach of the emergency vehicle. TEX. TRANSP. CODE § 547.702. However, a police officer is authorized to operate an emergency vehicle without using audible or visual if the officer is:

- responding to an emergency call or pursuing a suspect with probable cause to believe that knowledge of the presence of the officer will cause the suspect to:
 - destroy or lose evidence of a suspected felony;
 - end a suspected continuing felony before the officer has obtained sufficient evidence to establish grounds for arrest; or
 - evade apprehension or identification; or
- responding to traffic conditions on a multilaned roadway, where vehicles moving in response to the audible or visual signals may increase the potential for a collision or unreasonably extend the duration of the pursuit; or
- complying with a written policy relating to the use of audible or visible signals adopted by the city council.

TEX. TRANSP. CODE § 546.004.

The Texas Police Chiefs Association has sample policies available for use by police department members. These policies should be reviewed by your local legal counsel prior to being implemented.

Q. What is a police officer authorized to do when operating an emergency vehicle?

A. When a police officer is operating an emergency vehicle, a police officer can: (1) park the vehicle in no parking areas; (2) proceed through a red light or stop sign, after slowing as necessary for safe operation; (3) exceed the maximum speed limit, as long as the operator does not endanger life or property; and (4) disregard a regulation governing the direction of movement or turning in specified directions. TEX. TRANSP. CODE § 546.001, 546.002.

A police officer operating an emergency vehicle is not, though, relieved of the duty to operate the vehicle with appropriate regard for the safety of all persons or the consequences of reckless disregard for the safety of others. TEX. TRANSP. CODE § 546.005.

The Texas Municipal League Intergovernmental Risk Pool offers safe police vehicle operation courses. If your police department is interested, you may contact your representative to schedule a class.

Q. Is a police officer required to wear a seat belt when operating an emergency vehicle?

A. Texas state law requires all vehicle drivers to wear a seat belt. Police officers are **not** exempt from this requirement, even in emergency situations. TEX. TRANSP. CODE § 545.413.

Q. What inscriptions are required on city vehicles?

A. Generally, a city is required to have the name of the city, followed by the title of the department having custody of the vehicle or piece of heavy equipment on each side of the vehicle equipment. The inscription must be in different color from the vehicle or equipment and the title of the department must be in letters that are legible from a distance of at least 100 feet. TEX. TRANSP. CODE § 721.004. If a vehicle or piece of equipment is operating on a city street or highway without the required inscription, it is a misdemeanor punishable by a fine of not less than \$25 or more than \$100. TEX. TRANSP. CODE § 721.006.

Certain city vehicles, though, may be exempted from this inscription requirement. A city council may exempt police vehicles, code enforcement vehicles (if the officer is designated to enforce environmental criminal laws), city fire marshal, and arson investigator vehicles. TEX. TRANSP. CODE § 721.005.

Q. Can a city place an “In God We Trust” inscription on a police vehicle?

A. Law enforcement agencies around the country have begun placing “In God We Trust” decals on their vehicles. In Texas, the attorney general issued an opinion directly on this issue to a Senate Chairman. Op. Tex. Att’y Gen. No. KP-0042 (2015). The opinion bases its conclusion on the fact that “displaying ‘In God We Trust’ on police vehicles is a passive use of a motto steeped in our nation’s history that does not coerce citizen approval or participation.” It further provides that “[a]lthough a number of courts have addressed the motto in other contexts, no court of which we are aware has specifically addressed the display of the motto on law enforcement patrol vehicles.”

“In God We Trust” has been officially adopted by Congress as the nation’s motto, and it is likely that the historical basis for the nations’ religious heritage will continue to be given deference by a court.

Q. May a city advertise private businesses on police vehicles?

A. The Texas Attorney General has concluded that a county has no authority to place decals advertising private businesses on county-owned vehicles in exchange for a payment from the business. Tex. Att’y Gen. Op. No. GA-158 (2004). Since, like counties, general law cities look to state statute to determine what authority the city has, a court would likely conclude that a general law city has no authority to allow advertising on police vehicles.

Since a home rule city’s authority is not limited by state statute, a home rule city could allow advertising on police vehicles. However, city charter or local policies or ordinances may prohibit this practice. League staff is not aware of any city that has done so.

Q. How does a city dispose of a police vehicle?

A. A police vehicle is considered personal property, not real property. As such, there is not a specific statute governing the sale of personal property. The precise manner in which a city may dispose of a police vehicle will depend on the city charter and local policies or ordinances. The Texas Constitution prohibits cities from giving “a thing of value in aid of, or to any individual, association or corporation.” Tex. Const. art. III, § 52(a); art. XI, § 3. Thus, a city should receive the fair market value when selling or disposing of a police vehicle.

Before selling a police vehicle, the city must remove any equipment or insignia that could mislead a reasonable person to believe that the vehicle is a police vehicle, including any police light, siren, amber warning light, spotlight, grill light, antenna, emblem, outline of an emblem, and emergency vehicle equipment. TEX. GOV'T CODE § 2175.908.

Q. Is it illegal to identify yourself as a police officer if you aren't one?

A. Yes, it is a class B misdemeanor to make, provide to another person, or possess any item with an insignia of a law enforcement agency that identifies a person as a peace officer or a reserve law enforcement officer, if the person who makes, provides, or possesses the item bearing the insignia knows that the person is not a police officer. TEX. CODE CRIM. PROC. § 37.12. It is also a crime for a person to intentionally or knowingly misrepresent an object as property belonging to a law enforcement agency.

Q. May off-duty officers work for a school or another private entity?

A. Yes. A city may, though, adopt a policy regarding outside or “police-related employment,” where commissioned police officers provide security, traffic direction, or any other service that may involve use of their police authority to make arrests or detentions. You will want to work with local legal counsel to draft such a policy that clearly states the outside entity will be responsible for workers compensation and liability if an officer is injured.