



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 3, 2020

The Honorable Jim Murphy
Chair, House Committee on Pensions,
Investments & Financial Services
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. KP-0323

Re: Authority of the Metropolitan Transit Authority of Harris County to prohibit service and access to its transit authority system to a person who refuses to comply with a rule requiring facial coverings (RQ-0360-KP)

Dear Representative Murphy:

You ask whether the Metropolitan Transit Authority of Harris County (“METRO”) may refuse service and prohibit access to a person “who refuses to comply with a METRO rule requiring all persons (who are medically capable of doing so) to wear face coverings on METRO vehicles, facilities or properties.”¹ As background, you explain that “METRO is the metropolitan rapid transit authority serving the Houston region, including 14 smaller cities and major portions of unincorporated Harris County, with bus, rail, and paratransit transportation services.” Request Letter at 1. Through chapter 451 of the Transportation Code, the Legislature authorized the creation of metropolitan rapid transit authorities and granted control, management, and operation of those authorities to the board of each authority. *See* TEX. TRANSP. CODE § 451.053.

Your question arises amidst the COVID-19 pandemic. The Governor declared a state of disaster in Texas due to the spread of the communicable disease COVID-19 on March 13, 2020, and that disaster declaration continues today.² *See* TEX. GOV’T CODE § 418.014(a) (authorizing

¹Letter from Honorable Jim Murphy, Chair, House Comm. on Pensions, Invs., & Fin. Servs., to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (June 26, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0360KP.pdf> (“Request Letter”).

²*See* OFFICE OF THE TEXAS GOVERNOR, DISASTER PROCLAMATION (Mar. 13, 2020), <https://gov.texas.gov/news/post/governor-abbott-declares-state-of-disaster-in-texas-due-to-covid-19>. The Governor has renewed the disaster declaration multiple times, including most recently on July 10, 2020. *See* https://gov.texas.gov/uploads/files/press/DISASTER_renewing_covid19_disaster_proclamation_IMAGE_07-10-2020.pdf.

the Governor to declare a state of disaster). According to the Centers for Disease Control and Prevention (“CDC”), “COVID-19 spreads mainly from person to person through respiratory droplets produced when an infected person coughs, sneezes, talks, or raises their voice (e.g., while shouting, chanting, or singing).”³ The CDC therefore “recommends that people wear cloth face coverings in public settings when around people outside of their household.” CDC Guidance at 1. With regard to public transportation in particular, the CDC recommends “wearing a cloth face covering when physical distancing is difficult,” with exceptions for young children, those individuals who have trouble breathing, and anyone incapacitated or otherwise unable to remove the cloth face covering without assistance.⁴

Subsection 451.107(a) of the Transportation Code authorizes the board of a metropolitan transit authority to adopt rules for “the safe and efficient operation and maintenance of the transit authority system.” TEX. TRANSP. CODE § 451.107(a)(1). Consistent with this authority, if wearing a facial covering in a transit authority vehicle or facility is necessary for the safe and efficient operation of the transit authority system during the COVID-19 pandemic, METRO may require any person medically capable of doing so to wear a facial covering when entering its vehicles or facilities.

After you submitted your request, the Governor issued Executive Order GA-29, which requires every person in Texas to “wear a face covering over the nose and mouth when inside a . . . building or space open to the public,” with some exceptions.⁵ See TEX. GOV’T CODE § 418.012 (authorizing the Governor to “issue executive orders, proclamations, and regulations,” which “have the force and effect of law”). Those exceptions include individuals in counties with minimal cases of COVID-19 whose county judge has opted out of the face covering requirement by following specific procedures. Exec. Order GA-29 at 2–3. Thus, while GA-29 currently requires the majority of individuals in Texas to wear facial coverings when inside a space open to the public, including public transportation vehicles or facilities, it does not require all individuals entering such spaces across the State to wear a facial covering if a listed exception is met.

Executive Order GA-29 expressly authorizes local law enforcement and other local officials to enforce the order’s facial covering requirement and “other effective executive orders, as well as local restrictions that are consistent with this executive order and other effective executive orders.” Exec. Order GA-29 at 3. Following a verbal or written warning for first time violations, GA-29 authorizes a fine not to exceed \$250 for each subsequent violation. Exec. Order GA-29 at 3. Under GA-29, law enforcement and other officials may not “detain, arrest, or confine in jail any person” for a violation of the facial covering requirement. *Id.* However, the order also states that law enforcement and local officials may impose a permissible fine and “enforce trespassing laws and remove violators at the request of a business establishment or other property

³CENTERS FOR DISEASE CONTROL AND PREVENTION, ABOUT CLOTH FACE COVERINGS, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html> (“CDC Guidance”).

⁴CENTERS FOR DISEASE CONTROL AND PREVENTION, PROTECT YOURSELF WHEN USING TRANSPORTATION, <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/using-transportation.html#PublicTransit>.

⁵See OFFICE OF THE TEXAS GOVERNOR, EXEC. ORDER GA-29 at 2 (July 2, 2020), <https://open.texas.gov/uploads/files/organization/opentexas/EO-GA-29-use-of-face-coverings-during-COVID-19-IMAGE-07-02-2020.pdf> (“Exec. Order GA-29”).

owner.” *Id.*; see TEX. PENAL CODE § 30.05 (“Criminal Trespass”). Thus, METRO may refuse service to or have removed individuals who refuse to comply with a rule that requires facial coverings.

S U M M A R Y

Subsection 451.107(a) of the Transportation Code authorizes the board of a metropolitan transit authority to adopt rules for the safe and efficient operation and maintenance of the transit authority system. If wearing a facial covering in a transit authority vehicle or facility is necessary for the safe and efficient operation of the Metropolitan Transit Authority of Harris County during the COVID-19 pandemic, the Authority may require any person medically capable of doing so to wear a facial covering when entering its vehicles or facilities. Furthermore, it may refuse service to or have removed individuals who refuse to comply with a rule that requires facial coverings.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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