



**THE ATTORNEY GENERAL
OF TEXAS**

June 13, 1988

**JIM MATTOX
ATTORNEY GENERAL**

Honorable John L. Barnhill
Crosby County Attorney
Crosbyton, Texas 79322

LO-88-69

Dear Mr. Barnhill:

You ask whether a conviction results for the purposes of a defendant's driving record when the procedures outlined in article 45.54 of the Code of Criminal Procedure are applied.

After receiving your request it was determined that the same question was pending in an earlier opinion request. Enclosed you will find a copy of Attorney General Opinion JM-912 (1988). It was concluded in Attorney General Opinion JM-912 that the Department of Public Safety should record a conviction even though the punishment has been deferred under article 45.54. You will note that the opinion states that such record should reflect the fact that punishment has been deferred. JM-912 (1988) at 6.

Our research reflects that the holding in Triplett v. State, 686 S.W.2d 342 (Tex. App. Houston [1st Dist.], 1985, pet. ref'd), a source of concern to you, has been expressly rejected by the Court of Criminal Appeals in Brown v. State, 716 S.W.2d 939 (Tex. Crim. App. 1986, no pet.). Even if the holding in Triplett were still controlling, it would not be applicable to an article 45.54 procedure since the statute mandates that there must have been a conviction before there can be a deferral of the fine.

Trusting that the opinion in Attorney General Opinion JM-912 satisfactorily answers your question, I am

Very truly yours,

Rick Gilpin
Rick Gilpin, Chairman
Opinion Committee

Prepared by Tom G. Davis
APPROVED: OPINION COMMITTEE

Enclosure: JM-912

Ref.: RQ-1394, ID# 3222