



**THE ATTORNEY GENERAL
OF TEXAS**

Gerald C. Mann

~~JOHN B. SUTHERLAND~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable R. A. Weinert, Chairman
Civil Jurisprudence Committee
Senate
Austin, Texas

Dear Senator:

Opinion No. O-5066
Re: Constitutional validity
of S. B. 44, dealing with
the problem of delin-
quent children.

You submit to us a copy of S. B. No. 44, dealing with delinquent children, as favorably reported by your committee on January 26, 1943, with the request that we advise with respect to the constitutionality of the bill, especially with respect to, (a) the right of the court to exclude spectators from the trial; (b) the provisions that the records of the court shall be confidential; (c) the appeal to the Court of Civil Appeals, and (d) the provision that the judgment of the court shall not be suspended during appeal.

In this connection we subjoin the following remarks and suggestions:

(a) The provision contained in Section 13 that "in the hearing of any case the general public shall be excluded and only such persons admitted as have a direct interest in the case, except that the judge of said court may admit any person to the hearing at his direction," does not contravene Section 10 of the Bill of Rights (Article I) of the Constitution, since that Section deals only with "criminal prosecutions."

The delinquency proceeding of your bill is not in any sense a criminal prosecution -- it is a civil procedure -- and there is no constitutional mandate requiring public hearings in civil cases or proceedings.

(b) There is no constitutional provision forbidding the provision contained in Section 15 that the "court records shall not be inspected by persons other than probation officers or other officers of the Juvenile Court, unless otherwise directed by the court." We think such a provision in a measure like the one under consider-

ation is entirely within the legislative prerogative.

(c) The first sentence of Section 21, beginning with the words, "an appeal" on line 4, and ending with the word "cases" in line 5, should be rewritten, we suggest as follows:

"An appeal may be taken by any party aggrieved to the Court of Civil Appeals, and the case may be carried to the Supreme Court by writ of error or upon certificate, as in other civil cases."

This change is apparently imperative. The words of Section 21, above eliminated, authorize an appeal "in the manner provided by law or by rule of court", whereas, there is no provision at present for such an appeal, the general statutory right of appeal to the Courts of Civil Appeals extending to "all civil cases within the limits of their respective districts of which the District Courts and County Courts have or assume jurisdiction when the amount in controversy, or the judgment rendered, shall exceed \$100.00 exclusive of interest and costs." (R.C.S. Art. 1819). The proceeding here under consideration would not fall within the present statutory jurisdiction of the Court of Civil Appeals.

Likewise, Article 2249 of the Revised Civil Statutes contains the same statement of the jurisdiction of the Court of Civil Appeals.

(d) The provision in Section 21, that "an appeal, in the case of a child, shall not suspend the order of the Juvenile Court," violates no constitutional provision.

Whether or not the Legislature may in any event confer the jurisdiction and powers of the Juvenile Court upon the County Court, is a debatable question. Indeed, there is uncertainty if not actual contrariety of holding upon this point between the Court of Criminal Appeals and the Supreme Court, resulting, of course, in confusion. We are not prepared to advise with judicial certainty the one way or the other upon this debatable question.

We quite well understand that for administrative purposes it might be desirable for the County Court to exercise this jurisdiction.

In this state of the matter it might be wise not to eliminate the County Court as a Juvenile Court under

the bill, but to leave it as now written, in the hope that that court would be permitted to have and exercise the jurisdiction. The bill contains the separability clause, and if the Act should be stricken down as it empowers the County Court, the Act as a whole would not fall, but the jurisdiction and powers thereof could and would be exercised by the proper District Court. Your body in its wisdom will, of course, choose what it thinks the preferable course in this respect.

However, we do suggest that in any event there should be added, following immediately after line 53, page 1, at the end of Section 4 of the bill, the following words:

"It is provided, however, that the jurisdiction, powers and duties thus conferred and imposed upon the established courts hereunder are super-added jurisdictions, powers and duties, it being the intention of the Legislature not to create hereby another office."

The purpose of this added language is, of course, to avoid the possible danger of dual-office holding, in contravention of Section 40, Article XVI, of the Constitution.

Would it not be well to include in the bill a provision something like the following:

Upon any such jury trial, the court may submit the case upon a general charge to find whether or not the child is a "delinquent child", and the judgment shall follow the verdict unless such verdict be set aside for good cause.

It shall be good cause for setting aside any verdict that the evidence is not sufficient, legally or factually, to support it. No verdict shall ever be permitted to stand, nor judgment without a verdict be permitted to stand, that is not supported by evidence, that the parent, guardian or other person exercising parental control of such child, as the case may be, neglected or failed to exercise a reasonable parental care over such child.

This is, of course, a matter entirely beyond our prerogative to advise, but a jury would be slow to return a

verdict of commitment, and a court would be reluctant to approve a verdict that was not supported by some evidence that the parent had been remiss in his duty toward the child.

Very truly yours

ATTORNEY GENERAL OF TEXAS

s/ Ocie Speer

By

Ocie Speer
Assistant

OS-MR/cg

Approved March 3, 1943

s/ Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

This opinion considered and
approved in limited conference