



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable A. C. Turner, Warden  
Texas Prison System  
Huntsville, Texas

Dear Sir:

Opinion No. 0-5392

Re: After a convict has been convicted of lunacy in the County Court of Walker County and by that court committed to a State hospital for the insane, is the Warden of the State penitentiary authorized to deliver said convict to the Sheriff of Walker County for conveyance to such hospital, upon the order of said court?

You have requested the opinion of this department on the above stated question.

Article 3186a, Vernon's Revised Civil Statutes of 1925, provides for the trial and commitment of insane prisoners confined in the State penitentiary. By this statute the exclusive venue for the trial of insane convicts who are inmates of the Texas Prison System is conferred upon Walker County. Section 1 of said article is as follows:

"When any prisoner confined in the State penitentiary becomes insane, he shall be treated by the prison physician at Huntsville and shall be observed by said physician and the Warden of the Penitentiary; and when, in the judgment of said physician or warden, such convict is insane and should be transferred to one of the State Hospitals for the treatment of the insane, then either said prison physician or said warden shall go before the County Judge of Walker County, Texas, and make affidavit to said fact, and the County Judge shall forthwith proceed to try said convict in the same manner as other persons and under the same rules

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of procedure as apply to the trial of citizens who become insane. Upon trial, if said convict is found to be insane, the county judge before whom he is tried shall issue his warrant for transfer of said convict to one of the State Hospitals for the treatment of the insane or other place provided hereafter by law, provided the provision of this law shall not apply to prisoners under sentence of death and confined within the State Penitentiary."

It will be noticed that, while the statute confers upon the county judge of Walker County authority to order the transfer of the convict found insane to one of the State Hospitals for the treatment of the insane, yet it does not specify whether the prisoner shall be conveyed to the State Hospital by an agent of the Prison System or by some other officer. If the county court has authority to order the conveyance to be made by the sheriff of Walker County, such authority must be found in the general power of the court growing out of its jurisdiction over the lunacy trial.

Section 15 of Article V of the Texas Constitution provides in part:

"The County Court shall . . . transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards . . .; and the County Court, or judge thereof, shall have power to issue writs of injunctions, mandamus and all writs necessary to the enforcement of the jurisdiction of said Court.  
 . . ."

The applicable rule is thus stated in 11 Texas Jurisprudence, page 727, Section 19:

". . . It is an uncontroverted general principle that 'every regularly constituted court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and to prevent any abuse of its process.'

"This includes authority to carry into effect its own judgments, sentences and decrees and to prevent interference therewith."

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It is therefore our opinion that it is within the discretion of the county court of Walker County, upon conviction of lunacy in that court, of a prisoner of the Texas Prison System, to order the insane prisoner to be delivered by the warden of the Texas Prison System to the sheriff of Walker County and by said sheriff conveyed to the State Hospital to which the prisoner is committed, and that upon receipt of such order the warden is authorized to so deliver the prisoner to the sheriff of Walker County.

We think it appropriate to point out that, in such case, the order of the county court of Walker County should specifically direct the warden of the Prison System to deliver the prisoner to the sheriff of Walker County for conveyance to the State Hospital.

Yours very truly

ATTORNEY GENERAL OF TEXAS

*W. R. Allen*

By

W. R. Allen  
Assistant

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*George C. Bell*

DEPUTY ASSISTANT  
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WRA:db

