



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

0-3-476  
GERALD C. MANN  
ATTORNEY GENERAL

Honorable S. C. Hoyle, Jr.,  
Assistant County Attorney  
Brazos County  
Bryan, Texas

Dear Mr. Hoyle:

Opinion No. 0-5476

Re: Whether or not the County Court  
of Brazos County may lawfully be  
designated as a Juvenile Court under  
the terms of Senate Bill No. 44, 48th  
Legislature.

You propound to us for an opinion the question  
stated above.

Section 4 of Senate Bill No. 44 passed at the  
Regular Session of the 48th Legislature is as follows:

\*There is hereby established as follows in  
each county of the state a court of record to  
be known as the Juvenile Court, having such  
jurisdiction as may be necessary to carry out  
the provisions of this Act.

\*In counties having juvenile boards, such  
boards may designate the County Court or one or  
more of the District Courts to be the Juvenile  
Court or Courts for such county, and such designa-  
tion may be changed from time to time by such  
juvenile boards. In all other counties the Dis-  
trict Court or the County Court shall be the  
Juvenile Court as agreed between the judges of  
each respective courts, but until such time such  
County Court and District Court shall have con-  
current jurisdiction in cases of children coming  
within the terms of this Act.

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

Article 5139 of the Revised Civil Statutes insofar as pertinent is as follows:

"In any county having a population of one hundred thousand or over, according to the preceding Federal census, the judges of the several district and criminal district courts of such county, together with the county judge of such county, are hereby constituted a Juvenile Board for such county. \* \* \*"

According to the 1940 census, Brazos County has a population of 26,977.

We assume that your inquiry -- which you state has been made upon the request of both the District Judge and the County Judge -- arises out of the fact that Section 11 of S. B. No. 436, Ch. 96, approved March 26, 1917, creating the 85th Judicial District, composed of Robertson and Brazos Counties, declares:

"That the County Court of Brazos County shall have and exercise the general jurisdiction of probate courts, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians, and transact all business appertaining to estates of deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards including partition, settlement and distribution of estates of deceased persons and to apprentice minors as provided by law, and to issue all writs necessary for the enforcement of its own jurisdiction, to punish contempt under all such provisions as are now or may be provided by the general law governing county courts throughout the State; and the said county court of Brazos County shall have no other jurisdiction, civil or criminal."

Honorable S. C. Hoyle, Jr. - page 3

This Section, of course, does not abolish the County Court of Brazos County. On the contrary, it merely diminishes the jurisdiction of that court, and the County Court as such is as much a part of the judiciary as before.

Since Brazos County's population is less than one hundred thousand, there is no Juvenile Board for that county. So that, as provided in Section 4 of the Juvenile Act, the County Court may act concurrently with the District Court as a Juvenile Court, and upon an agreement between the judges of these courts, it would become the sole Juvenile Court for that county.

While the manner of agreement between the judges is not provided by the Act, nevertheless we think it should be evidenced by orders of each, duly entered upon the minutes of their respective courts.

Any conflict in S. B. No. 436 and S. B. No. 44 must be resolved in favor of the latter.

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Very truly yours

*Sam Allen*

ATTORNEY GENERAL OF TEXAS

DEPUTY ATTORNEY GENERAL

By

*Ocie Speer*  
Ocie Speer  
Assistant

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