



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

June 23, 1947

Hon. Sam B. Hall
County Attorney
Harrison County
Marshall, Texas

Opinion No. V-259

Re; The legal term times
of the Harrison County
Court, under the sub-
mitted facts

Dear Sir:

We refer to your letter of May 13, 1947 ad-
dressed to this Department which in part is as follows:

"In 1899 the County Commissioners' Court of Harrison County, Texas, passed an order fixing the terms of holding county court in this county providing that such terms might be held beginning on the first Mondays in January, March, May, July, September, November and extending eight weeks from such dates. No other order since 1899 seems to have been passed by such court until yesterday, May 12, 1947, the Commissioners' Court passed an order on the subject, a copy of which is attached hereto.

"Recently pleas of guilty were accepted by the County Judge and penalties assessed, one on April 10, 1947, and the other on April 26, 1947. Motions for new trial were filed in each of these cases and granted by the court on other grounds, but in each case the attorney representing the defendant asserted that the convictions were null and void because there was no term of court under the law at the times of the court accepting the pleas. He served notice that he would continue to raise the point until the issue was squarely joined, and we therefore request the opinion of your department as to whether the pleas of guilty mentioned above were legal. In other words, the attorney says that until the Commissioners' Court passed a new order, Harrison County was under the general provisions of the statutes and Constitution, and that Harrison County court was

only in legal term time for three weeks beginning on the first Monday in February, May, August and November. He further says he has doubt as to whether the present Commissioners' Court can do anything to rectify the situation until additional Legislative provision is made for Harrison County.

". . . .

"By virtue of Article 5, Section 22 of the Constitution which authorizes the Legislature to change the jurisdiction of county courts, the Legislature seems to have passed three acts making such changes. In 1911 the County Court was deprived of jurisdiction in civil cases by Acts of 1911, p. 95. (See Art. 1970-214, V. A. C. S.) In 1913, this law was amended somewhat by Acts of 1913, p. 103. By Section 7 of the 1913 act, it was provided 'The county commissioners' court of said county may hereafter fix the terms of said court whenever it may be deemed necessary.' (See Art. 1970-223, V.A.C.S.) Both the 1911 and 1913 Acts seem to have incorporated a general repealing clause: 'That all laws and parts of laws in conflict herewith be and the same are hereby repealed.' (Art. 1970-217, V.A.C.S.)

"In 1927 the 40th Legislature passed the following:

'Sec. 1. Hereafter the County Court of Harrison County, Texas, shall have the same jurisdiction and shall be subject to the same provisions as County Courts generally throughout the State, under the Constitution and General Laws of the State of Texas.'

"Section 2 of this Act conformed the jurisdiction of the District Court of Harrison County to the changes made in jurisdiction made in the County Court. Section 3 repealed all conflicting laws and parts of laws. This measure was effective March 16, 1927.

"It is asserted that under the reasoning of the Court of Criminal Appeals in the

case of Smith v. State, 183 S. W. 2d, 175, all judgments of conviction entered in the Harrison County court on any day not during the term of the court as fixed by the Constitution and general statutes, are void.

"You may readily see the importance and gravity of the situation, and your careful consideration and advice will be very much appreciated."

That part of Section 29 of Article V of the State Constitution pertinent here is as follows:

"* * * Until otherwise provided, the terms of the County Court shall be held on the first Monday in February, May, August and November, and may remain in session three weeks."

Pursuant to the above quoted provision of the Constitution, Article 1962, V. C. S. was passed in 1885 and is as follows:

"The Commissioners court may, at a regular term thereof, by an order entered upon its records, provide for more terms of the county court for the transaction of civil, criminal and probate business, and fix the times at which each of the four terms required by the Constitution, and the terms exceeding four, if any, shall be held, not to exceed six annually, and may fix the length of each term. When the number of the terms of the county court has been fixed, the court shall not change the order before one year from the date of entry of the original order fixing such terms. (Acts 1885, p. 53)"

Article 1961, V. C. S. is as follows:

"The county court shall hold at least four terms for both civil and criminal business annually, and such other terms each year as may be fixed by the commissioners court. After having fixed

the times and number of the terms of a county court, they shall not change the same until the expiration of one year. Until, or unless otherwise provided, the term of the county court shall be held on the first Monday in February, May, August and November, and may remain in session three weeks. (Const. Amendment 1883, art. 5, sec. 29)"

Article 586, C.C.P., provides that:

"Each county court shall hold a term for criminal business on the first Monday in every month, or at such other time as may have been fixed in accordance with law."

That part of Section 17 of Article V of the State Constitution pertinent here is as follows:

"The County Court shall hold a term for civil business at least once in every two months, and shall dispose of probate business, either in term time or vacation as may be provided by law, and said court shall hold a term for criminal business once in every month as may be provided by law. . ."

Insofar as the record reveals, the County Court of Harrison County has never been divested of jurisdiction in criminal cases.

We know of no law which prohibits a term of county court in criminal matters being different from the term of court in civil cases. On the contrary, in view of Article 586, C.C.P., and Section 17 of Art. V, supra, it clearly indicates that there may be different terms in county court for criminal and civil cases.

The case of Smith v. State, 183 S. W. (2d) 175, was one where the county court of Marion County had been divested of jurisdiction in 1897 in criminal cases. Jurisdiction in such cases was restored to the county court in 1939, but the Commissioners' Court of said county had never passed any order setting the terms of the court subsequent to such restoration.

The court held that the only term of county court in Marion County was that set by Section 29 of Article V, supra, of the Constitution, which shall begin on the first Mondays in February, May, August and November, and may remain in session three weeks. The court held further that the plea of guilty having been made and judgment entered on June 24, 1944, was not during a term of court as fixed by the Constitution and the Legislature and therefore, having been entered while the court was in vacation, was void.

The facts in the instant cases are quite different from those in the Smith case. Here the County Court of Harrison County has never been divested of jurisdiction in criminal cases, and pursuant to the Constitution and the statutes, the Commissioners' Court of Harrison County provided in 1899 that the terms of county court might be held the first Mondays in January, March, May, July, September and November and extending eight weeks from such dates. Even though the County Court had been divested of civil matters and though the terms of county court in civil matters may have been changed, the terms of the county court of Harrison County for criminal cases remains as set by the Commissioners' Court until changed by that Court or by legislative action. This being true, the March term of court for Harrison County in criminal cases began on the first Monday in March and continued for eight weeks from such date.

Therefore, in view of the foregoing, you are respectfully advised that it is the opinion of this Department that the pleas of guilty entered on April 10th, 1947, and April 26th, 1947, were both had in term time, and therefore valid in this respect.

SUMMARY

Since the Commissioners' Court of Harrison County in 1899 provided that the terms of County Court might be held the first Mondays in January, March, May, July, September and November, and extending eight weeks from such dates, and further, since the terms of said County Court have never been changed in

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criminal cases, pleas of guilty entered on April 10th, 1947, and April 26th, 1947, were both had in term time; therefore valid in this respect. Art. 1962 V. C. S.; Art 586 C. C. P.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By *Bruce Allen*
Bruce Allen
Assistant

BA:WB

APPROVED:

Price Daniel
ATTORNEY GENERAL