



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL

ATTORNEY GENERAL

March 31, 1952

Hon. J. R. Alamia
Criminal District Atty.
Hidalgo County
Edinburg, Texas

Opinion No. V-1430

Re: Authority of the County
Judge to commit a delin-
quent boy to the Youth
Development Council with-
out action by the Juve-
nile Board.

Dear Mr. Alamia:

Your request for an opinion of this office relates to the commitment of a juvenile delinquent, and presents the following questions:

"Question #1. Since we have in this county two District Courts, should the judges of the said two District Courts, together with the County Judge of this county, meet as a juvenile board and designate one of the District Courts as a juvenile court, especially since the enactment of the statute creating the juvenile board, said board has not met and we have at this time a new District Judge and a new County Judge?

"Question #2. Assuming the facts in Question #1, would the County Judge of Hidalgo County, Texas, being a member of the juvenile board of Hidalgo County, have any jurisdiction to hear the facts in the above mentioned case and commit the boy to Gatesville if his discretion so dictated?

"Question #3. Assuming the facts in Question #1, could the County Judge of Hidalgo County, Texas, being a member of the juvenile board of this county, have a right to hear the facts in the case and then recommend to the District Judge, who has in the past heard all cases of juvenile delinquency in this county, that the boy be committed to the Gatesville School for Boys?"

Article 5139B, V.C.S., provides:

"In all counties having a population of more than one hundred thousand (100,000) inhabitants, according to the last preceding Federal Census, and bordering on the Republic of Mexico, the Judges of the District Courts and the County Judges are hereby constituted a County Juvenile Board. The members of the County Juvenile Board shall each be allowed additional compensation in the amount of Fifteen Hundred (\$1500.00) Dollars per annum which shall be paid in twelve (12) equal installments out of the general funds of the county. Provided, however, that no member of such Board shall receive more than Fifteen Hundred (\$1500.00) Dollars per annum as compensation for services on such Board."

Section 4 of Article 2338-1, V.C.S., is in part as follows:

"Section 4. 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 jurisdictions as may be necessary to carry out the provisions of this Act.

"In all counties having only one (1) district court and having a juvenile board, such board shall designate the county court or the district court to be the juvenile court for such county, and in all other counties having only one (1) district court, but no juvenile board, the county judge and the district judge of such county shall designate the county or district court of such county as the juvenile court. In counties having two (2) or more district courts or one (1) or more district courts and one (1) or more criminal district courts, and having a juvenile board, such board shall designate one (1) of such district courts or criminal district courts to be the juvenile court of such county, and in all other counties having two (2) or more district courts, or one (1) or more district courts and one (1) or more criminal district courts, the judges of such courts and the county

judge of such counties shall designate one (1) of such district courts or criminal district courts as the juvenile court of such county. All such designations may be changed from time to time by such boards or such judges as are authorized herein to make the same, for the convenience of the people and the welfare of minors; provided, that there shall be at all times a juvenile court designated for each county. It is the intent of the Legislature that in selecting a court to be the juvenile court of each county, such selection be made as far as practicable so that the court designated as the juvenile court will be one which is presided over by a judge who has a sympathetic understanding of the problems of child welfare, and that changes in the designations of juvenile courts be made only when the best interests of the public require it."

Hidalgo County has a population of 160,446 inhabitants according to the 1950 Federal Census, and borders on the Republic of Mexico. Therefore, the provisions of Article 5139B are applicable and there is established a juvenile board within the county. There are also two district courts within the county, namely the 92nd and 93rd Judicial District Courts. Section 4 of Article 2338-1, V.C.S., expressly provides that "in counties having two (2) or more district courts . . . and having a juvenile board such board shall designate one of such district courts . . . to be the juvenile court of such county." Therefore, in answer to your first question it is our opinion that the juvenile board should meet and designate one of the district courts as the juvenile court of Hidalgo County.

Concerning your second question, Section 5 of Article 2338-1, V.C.S., provides that:

"The Juvenile Court shall have exclusive original jurisdiction in proceedings governing any delinquent child, and such court shall be deemed in session at all times."

Articles 1083 through 1093, V.C.C.P., with regard to jurisdiction of the county court in cases

involving delinquent children, were specifically repealed by Section 24 of Article 2338-1, V.C.S. Based upon these provisions, it is our opinion that the county judge of Hidalgo County, although a member of the juvenile board, has no jurisdiction to hear facts in a particular case and commit a subject to the Youth Development Council.

The general tenor of Article 2338-1, V.C.S., indicates that the Judge of the Juvenile Court has exclusive jurisdiction to conduct the hearing as well as to proceed to completion in every case within the provisions of that statute. Section 13 indicates very clearly that the juvenile court must hear the facts in that it provides:

"The Judge may conduct the hearing in an informal manner and may adjourn the hearing from time to time. In the hearing of any case the general public may be excluded. All cases involving children shall be heard separately and apart from the trial of cases against adults.

"If no jury is demanded, the Judge shall proceed with the hearing. When the proceeding is with a jury, the verdict shall state whether the juvenile is a 'delinquent child' within the meaning of this Act, and if the Judge or jury finds that the child is delinquent, or otherwise within the provisions of this Act, the court may by order entered proceed as follows:"

You are therefore advised in answer to your third question that a child may be adjudged delinquent only after a hearing in the juvenile court and the Judge of that Court is not authorized to enter a judgment upon recommendations of the County Judge without a hearing in the juvenile court.

Hon. J. R. Alamia, page 5 (V-1430)

SUMMARY

The juvenile board in Hidalgo County, a county with two district courts, must appoint one of the district judges as a juvenile court.

Yours very truly,

APPROVED:

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