



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

April 8, 1953

Hon. Ottis E. Lock, Chairman
Senate Finance Committee
53rd Legislature
Austin, Texas

Opinion No. S-26

Re: Constitutionality of
House Bill 561.

Dear Sir:

You have requested an opinion of the constitutionality of House Bill 561 of the 53rd Legislature creating the office of District Attorney for the Criminal District Court of Harris County, abolishing the office of Criminal District Attorney of Harris County and transferring all civil matters to the County Attorney of Harris County.

House Bill 561 and its companion, House Bill 562, create the office of District Attorney for the Criminal District Court of Harris County, abolish the office of Criminal District Attorney of Harris County, create the office of County Attorney for Harris County and prescribe the duties of each office.

It is now well settled that the Legislature is vested with the power to create the office of District Attorney and County Attorney, and prescribe their respective duties pursuant to the provisions of Section 21 of Article V of the Constitution of Texas. Reed v. Triplett, 232 S.W.2d 169 (Tex.Civ.App. 1950, error ref.); Neal v. Sheppard, 209 S.W.2d 388, (Tex.Civ.App. 1948, error ref.); Jones v. Anderson, 189 S.W.2d 65 (Tex.Civ.App. 1945, error ref.).

It is stated in Reed v. Triplett:

"The 51st Legislature was undoubtedly vested with power, had it deemed such action

necessary, to have created the office of criminal district attorney in the 66th Judicial District composed of Hill County and to have abolished the office of county attorney in that county. Jones v. Anderson, Tex.Civ.App., 189 S.W.2d 65, er.ref.; Neal v. Sheppard, Tex.Civ.App., 209 S.W.2d 388, er.ref. But the Legislature did not attempt to exercise any such power by the enactment of Art. 322c of Vernon's Tex.Civ.Stats. It merely created the office of district attorney in the 66th Judicial District of Hill County without abolishing or attempting to abolish the office of county attorney in that county. We see no Constitutional inhibition against the exercise of such power, even though the judicial district within which the office of district attorney was created consists only of Hill County . . ."

You are therefore advised that House Bill 561 and House Bill 562 are constitutional. We deem it advisable to point out, however, that Section 21 of Article V of the Constitution provides that "A county attorney, for counties in which there is not a resident criminal district attorney, shall be elected by the qualified voters of each county, who shall be commissioned by the Governor, and hold his office for the term of two years." In view of this provision, House Bill 561 abolishing the office of Criminal District Attorney of Harris County and creating the office of District Attorney for the Criminal District Court of Harris County should be enacted prior to House Bill 562 creating the office of County Attorney.

SUMMARY

House Bill 561 and House Bill 562 abolishing the office of Criminal District Attorney of Harris County, creating the office of District Attorney for the Criminal District

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Court of Harris County, and creating the
office of County Attorney for Harris
County are constitutional.

Yours very truly,

APPROVED:

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JR:am