



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

November 20, 1959

**WILL WILSON**  
ATTORNEY GENERAL

Mr. Ramie H. Griffin  
Criminal District Attorney  
Beaumont, Texas

Opinion No. WW-737

Re: Whether a sheriff receiving notification by letter from another law enforcement officer that there is a warrant outstanding for a certain person, has authority to arrest said person before he receives the outstanding warrant or before it is transmitted to him by telegram as provided in Articles 225, 227, 228, and 229, C.C.P.

Dear Mr. Griffin:

You ask the following question:

"If the Sheriff of Jefferson County receives notification by letter from the Sheriff of another County, or any other law enforcement agency in another County in the State of Texas, that there is a warrant outstanding for a certain person (giving the warrant number and description of the offense), does the Sheriff of Jefferson County have authority to arrest the person described in such notice before he receives the outstanding warrant or before the warrant is transmitted to him by telegraph as provided in Articles 225, 227, 228 and 229, C.C.P.?"

There are two types of arrests, arrest under a warrant and arrest without a warrant. Your question and this opinion are only concerned with an attempted arrest under a warrant.

Article 243, Texas Code of Criminal Procedure reads as follows:

"In executing a warrant of arrest, it shall always be made known to the accused under what authority the arrest is made; and, if requested, the warrant shall be exhibited to him. O.C. 231 (Emphasis added)

The Court of Criminal Appeals, in Cortez v. State, 161 S.W.2d 495, 498 (1942), said of this provision:

"It occurs to us that where the evidence fails to show that this provision of said article was complied with, the presumption obtains that the arrest was illegal; . . ."

Unless the arresting officer can produce evidence that he complied with Article 243, the arrest will be presumed illegal. The officer must have a warrant with him at the time he makes the arrest. Mere notification that a warrant exists is not sufficient as the arresting officer cannot then meet the requirements of Art. 243, Texas Code of Criminal Procedure.

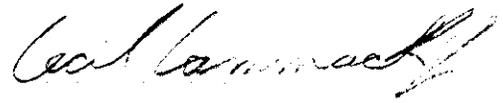
SUMMARY

A sheriff receiving notification by letter from another law enforcement officer that there is a warrant outstanding for a certain person, has no authority to arrest said person under that warrant before he receives the outstanding warrant or before it is transmitted to him by telegram as provided in Articles 225, 227, 228 and 229, C.C.P.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By:



Cecil Cammack, Jr.  
Assistant

CC:aw

APPROVED:

OPINION COMMITTEE:

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REVIEWED FOR THE ATTORNEY GENERAL  
BY:

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