



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

July 19, 1961

Honorable Homer A. Davis
County Attorney
Dallam County
Dalhart, Texas

Opinion No. WW-1092

Re: Whether Dallam County has venue to prosecute for forgery a person who forged a check in El Paso, Texas, which was placed in an El Paso bank for collection through a Dalhart bank which honored the check.

Dear Mr. Davis:

You have requested an opinion from this Department construing the venue statute, Article 187 of the Code of Criminal Procedure, and stated the facts as follows:

"Our facts are simply this, that the person forged a check in El Paso, Texas, which was placed in an El Paso bank for collection through a Dalhart bank. The Dalhart bank failed to notice the forgery and honored the check and has thus suffered damages."

The question raised by you has not been passed upon by the courts since Art. 187 was amended in 1921.

We have, however, found a case construing the venue statute as it existed in 1895. The statute at that time provided as follows:

"The offense of forgery may be prosecuted in any county where the written instrument was forged or where the same was used or passed, or attempted to be used or passed."

The case referred to is that of Thulemeyer v. State, 31 S.W. 659 (Tex.Crim. 1895), and involved the forgery of a State warrant drawn on the State Treasury of Texas. The name of the payee in the warrant was forged in San Antonio, Bexar County, the warrant cashed in a San Antonio bank, which bank proceeded to send it for collection to an Austin bank.

The court quoted at length from an Alabama case and cited other cases resulting in the opinion that:

". . . the transaction constituting the forgery including the absolute transfer of the forged instrument, was consummated in Bexar county, and the defendant had no further control of the state treasury warrant, nor any interest therein. He, no doubt, anticipated that the bank would ultimately collect the money from the treasury at Austin, but to him that was a matter of indifference. He had his money, and it was immaterial, so far as he was concerned, whether the ultimate payment of the warrant was ever procured; and, in our opinion, our statute on the subject of venue in forgery cases has a reference to some act done by the alleged forger in the county in which he is sought to be prosecuted. And whether he does this act by himself, or through some agent or procurement, is immaterial in either case. He will be equally responsible. But where he has parted with the alleged forged instrument, and has no further property in the same, or control over, same, he cannot be prosecuted therefor in some other county, in which some other party that may have owned said instrument has subsequently passed it. Because the district court of Travis county has no jurisdiction of said offense, the judgment is reversed and cause remanded."

The venue statute relative to forgery was amended on three occasions and presently the existing law is Article 187, V.C.C.P. which reads as follows:

"Forgery may be prosecuted in any county where the written instrument was forged, or where the same was used or passed, or attempted to be used or passed, or deposited or placed with another person, firm, association or corporation either for collection or credit for the account of any person, firm, association or corporation. All forging and uttering, using or passing of forged instruments in writing which concern or affect the title to land in this State may be prosecuted in Travis County, or in the county in which such land, or any part thereof, is situated."

This statute, as amended, adds after the words "to be used or passed" of the old law, the following: "or deposited or placed

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with another person, firm, association or corporation either for collection or credit for the account of any person, firm, association or corporation. . ."

We find nothing in the amendment that would change the ruling in the Thulemeyer case.

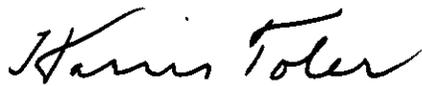
We have made a search of annotated cases and the text books and do not find a recent case in point. We believe the statute is clear and unambiguous and that the decision in the Thulemeyer case, supra, properly states the rule. Therefore, it is our opinion that under the stated facts, exclusive venue would lie in El Paso County, Texas.

SUMMARY

Where an act of forgery was completed under the provisions of Article 187, V.C.C.P., in El Paso County, venue to try the accused lies in El Paso County.

Very truly yours,

WILL WILSON
Attorney General of Texas

By 
Harris Toler
Assistant Attorney General

HT/ca

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

Ralph Rash
Pat Bailey
Milton Richardson
Watson C. Arnold

REVIEWED FOR THE ATTORNEY GENERAL
BY: Morgan Nesbitt