



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

WALSHGARDNER CLARK
ATTORNEY GENERAL

April 26, 1966

Honorable Cecil Pruett
County Attorney
Hutchinson County
Berger, Texas

Opinion No. C-666

Re: Whether Article 23.04
of the 1966 Code of
Criminal Procedure au-
thorizes county clerks
to issue "capias" to per-
sons other than the
sheriff.

Dear Mr. Pruett:

By your recent letter you requested an opinion of this office as to whether the county clerk has authority to issue a capias to persons other than the sheriff in misdemeanor cases.

The 1966 Code of Criminal Procedure defines the capias in Article 23.01, as follows:

"A 'capias' is a writ issued by the court or clerk, and directed 'To any peace officer of the State of Texas', commanding him to arrest a person accused of an offense and bring him before that court immediately, or on a day or at a term stated in the writ."

The capias in misdemeanor cases is mentioned in Article 23.04 which reads as follows:

"In misdemeanor cases the capias or summons shall issue from a court having jurisdiction of the case. The summons shall be issued only upon request of the attorney representing the State and shall follow the same form and procedure as in a felony case."

Article 23.04 provides directions for the issuance of a summons, but does not provide directions for the issuance of a capias. The only directions for the issuance of a capias under the 1966 Code of Criminal Procedure are found in Article 23.01, heretofore quoted. Such Article clearly provides for the issuance of a capias to any peace officer of the State of Texas.

Honorable Cecil Pruett, page 2 (C-666)

Therefore, it is the opinion of this office that Article 23.01 of the 1966 Code of Criminal Procedure governs the issuance of a capias under Article 23.04 and the court or the clerk is authorized to issue the capias in a misdemeanor case and direct the same "to any peace officer of the State of Texas".

SUMMARY

The county clerk, in misdemeanor cases, has authority to issue a capias to any peace officer of the State of Texas.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By: Thomas W. Mack
THOMAS W. MACK
Assistant Attorney General

TWM/er

APPROVED:

OPINION COMMITTEE
W. O. Shultz, Chairman
Ralph Rash
Phillip Crawford
Howard M. Fender
Sam Kelley

APPROVED FOR THE ATTORNEY GENERAL
By: T. B. Wright