



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

January 17, 1974

The Honorable W. G. Woods, Jr.  
District Attorney  
75th Judicial District  
P. O. Box 431  
Liberty, Texas 77575

Opinion No. H- 213

Re: Jurisdiction over the  
offense of homicide by vehicle.

Dear Mr. Woods:

You have asked our opinion on two questions which are:

"1. Does the District Court have any jurisdiction to try an offense known as 'Homicide by Vehicle' which is described in Vernon's Ann. Civ. St. Art. 670ld, Sec. 50A?

"2. If your answer is in the negative, do the County Courts or County Courts at Law have exclusive jurisdiction of said offense?"

Vernon's Texas Civil Statutes, Article 670ld, § 50A provides:

"(a) Whoever shall unlawfully and unintentionally (with a conscious disregard for the rights of others) cause the death of another person while engaged in the violation of any State law or municipal ordinance applying to the operation or use of a vehicle or streetcar or to the regulation of traffic shall be guilty of homicide when such violation is the proximate cause of said death.

"(b) Any person convicted of homicide by vehicle shall be fined not less than Five Hundred Dollars (\$500) nor more than Two Thousand Dollars (\$2,000), or shall be imprisoned in the county jail not less than three (3)

months nor more than one (1) year, or may be so fined and so imprisoned; provided, however, that such person may be tried only upon indictment by a grand jury and may be tried only in the county where the violation occurred."

This article is not expressly repealed by the new Penal Code, Acts 1973, ch. 399, p. 991, Sec. 3; nor do we believe it is repealed by implication. Compare Vernon's Texas Penal Code, §§ 19.05 and 19.07, but see Cooper v. State, 8 S.W. 654 (Tex. Ct. App. 1888).

Vernon's Texas Penal Code, § 12.02, provides that "[o]ffenses are designated as felonies or misdemeanors." A felony is defined as "an offense so designated by law or punishable by death or confinement in a penitentiary," § 1.07 (a)(14), Vernon's Texas Penal Code, and a misdemeanor is "an offense so designated by law or punishable by fine, by confinement in jail, or by both fine and confinement in jail." Vernon's Texas Penal Code, § 1.07 (a)(21).

As the offense of homicide by vehicle is punishable by confinement in the county jail rather than the penitentiary, it is clearly a misdemeanor.

Vernon's Texas Code of Criminal Procedure, Article 4.05 provides:

"District courts and criminal district courts shall have original jurisdiction in criminal cases of the grade of felony, and of all misdemeanors involving official misconduct."

See also, Texas Constitution, Article 5, Section 8. Official misconduct involves "unlawful behavior in relation to the duties of . . . office, willful in its character . . . and includes any willful or corrupt failure, refusal or neglect of an officer to perform any duty enjoined on him by law." Vernon's Texas Civil Statutes, Art. 5973; § 39.01, Vernon's Texas Penal Code; Robinson v. State, 470 S.W. 2d 697 (Tex. Crim. 1971); Craig v. State, 19 S.W. 504 (Tex. Ct. App. 1892). As homicide by vehicle is neither a felony nor official misconduct, the district court has no jurisdiction to try the offense.

Vernon's Texas Code of Criminal Procedure, Art. 4.07 provides:

"The county courts shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the justice court, and when the fine to be imposed shall exceed two hundred dollars."

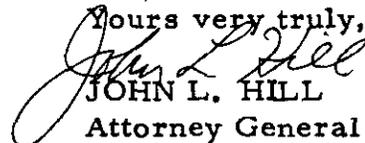
Homicide by vehicle is a misdemeanor, exclusive original jurisdiction is not given to the justice court, and the fine which can be imposed is more than two hundred dollars; therefore, exclusive original jurisdiction to try the offense lies in the county court, and where appropriate, the county court at law.

Since the offense may be tried only on indictment, the district court will have first contact with a case involving homicide by vehicle, but after receiving the indictment it should transfer the case to the appropriate county court for trial. Article 21.26, Vernon's Texas Code of Criminal Procedure.

SUMMARY

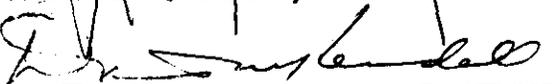
The county court has exclusive jurisdiction to try the offense of homicide by vehicle as defined in Vernon's Texas Civil Statutes, Article 6701d, § 50A.

Yours very truly,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
LARRY F. YORK, First Assitant

  
DAVID M. KENDALL, Chairman  
Opinion Committee