



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 3, 2020

The Honorable Mark A. Gonzalez
Nueces County District Attorney
901 Leopard, Room 206
Nueces County Courthouse
Corpus Christi, Texas 78401-3681

Opinion No. KP-0321

Re: Whether in misdemeanor cases the trial court has authority to issue a *capias* on the filing of an information or complaint under article 23.04, Code of Criminal Procedure (RQ-0331-KP)

Dear Mr. Gonzalez:

You ask whether in misdemeanor cases the trial court has authority to issue a *capias* on the filing of an information or complaint under article 23.04, Code of Criminal Procedure.¹ In chapter 23, a *capias* is a writ from a court directed to any peace officer, commanding the officer “to arrest a person accused of an offense and bring the arrested person before that court.” TEX. CODE CRIM. PROC. art. 23.01(2) (defining *capias* “[i]n this chapter”). The purpose of a *capias* “is to secure the presence of a defendant at a proceeding against him.” *Gallegos v. State*, 971 S.W.2d 626, 628 (Tex. App.—San Antonio 1998, pet. ref’d).

Your questions implicate articles 23.01 and 23.04 of the Code of Criminal Procedure. Article 23.04 provides that “[i]n misdemeanor cases, the *capias* or summons shall issue from a court having jurisdiction of the case *on the filing of an information or complaint.*” TEX. CODE CRIM. PROC. art. 23.04 (emphasis added). Article 23.01 defines *capias*, in part, as “a writ that is . . . issued by a judge of the court having jurisdiction of a case *after commitment or bail and before trial.*” *Id.* art. 23.01(1) (emphasis added). You state that some judges are reluctant to issue a *capias* in a misdemeanor case when the accused has not been arrested, “based on their belief that they have no jurisdiction prior to commitment or bail.” Brief at 1. You wish to know whether a trial court has authority to issue a *capias* in a misdemeanor case on the filing of an information or complaint even when the accused has not been arrested or posted bail. Request Letter at 1. You ask whether in subarticle 23.01(1), “the qualifying phrase ‘after commitment or bail and before trial’ modifies ‘issued’ or ‘a judge of the court having jurisdiction of the case.’” Brief at 2. In

¹See Letter and Brief from Honorable Mark A. Gonzalez, Nueces Cty. Dist. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Feb. 4, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0331KP.pdf> (“Request Letter” and “Brief” respectively).

essence, the issue is whether article 23.01 should be construed as limiting when a *capias* may issue or as identifying the court that may issue it.

When construing a statute, courts attempt to discern and give effect to the Legislature's intent. *Gunn v. McCoy*, 554 S.W.3d 645, 672 (Tex. 2018). They rely on the language the Legislature chose as the truest manifestation of legislative intent. *LTTS Charter Sch., Inc. v. C2 Constr., Inc.*, 342 S.W.3d 73, 75 (Tex. 2011). Courts construe a statute "using well-established interpretive principles to construe the statutory language." *In re Xerox Corp.*, 555 S.W.3d 518, 522 (Tex. 2018). Statutory words and phrases "shall be read in context and construed according to the rules of grammar and common usage." TEX. GOV'T CODE § 311.011(a). The "last-antecedent" canon of construction, also called the "nearest reasonable referent,"² counsels "that a qualifying phrase in a statute [ordinarily] must be confined to the words and phrases immediately preceding it to which it may, without impairing the meaning of the sentence, be applied." *Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 580 (Tex. 2000); *Zachry Constr. Corp. v. Port of Houston Auth.*, 449 S.W.3d 98, 107 (Tex. 2014) ("As a rule, a modifier . . . applies to the nearest reasonable referent." (footnote and citation omitted)).

Subarticle 23.01(1) defines a *capias* as:

a writ that is: (1) issued by a judge of the court having jurisdiction of a case after commitment or bail and before trial, or by a clerk at the direction of the judge

TEX. CODE CRIM. PROC. art. 23.01(1). For the phrase "after commitment or bail and before trial," the nearest reasonable referent is "having jurisdiction of a case," which in turn modifies "judge of the court." Applying the last-antecedent canon, the subarticle identifies who may issue the writ, being the judge with jurisdiction at that stage of the criminal proceedings. The lack of a comma or other break before the phrase "after commitment or bail and before trial" reinforces this reading as modifying the nearest reasonable referent rather than the more remotely located word "issued" at the beginning of the subsection. *See Sullivan v. Abraham*, 488 S.W.3d 294, 297 (Tex. 2016) (stating that "[p]roperly placed commas [c]ould cancel the last antecedent canon and vice versa" (quotation marks omitted)).

We must, however, also examine the language in the "context of the statute as a whole." *Cadena Comercial USA Corp. v. Tex. Alcoholic Bev. Comm'n*, 518 S.W.3d 318, 326 (Tex. 2017). Other provisions in chapter 23 appear to support the conclusion that a *capias* may only issue after commitment or the setting of bail. *See, e.g.*, TEX. CODE CRIM. PROC. arts. 23.05(a) (requiring issuance of *capias* upon declaration of a bail forfeiture or when a surety surrenders a defendant), 23.10 (authorizing an officer making a felony arrest to take bail as provided by article 17.21), 23.12 (requiring court in bailable felony cases to set the amount of bail and then endorse upon the *capias* the amount of bail required), 23.14 (authorizing an officer making a misdemeanor arrest

²*See generally* Antonin Scalia & Bryan A. Garner, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 152–53 (2012).

under a *capias* to take a bail bond); *see also id.* art. 23.03(a) (requiring issuance of a *capias* in felony cases “after bail has been set or denied”).

Furthermore, the Code of Criminal Procedure is organized into subparts that are not numbered but are titled according to the stage or nature of criminal proceedings, including “Arrest, Commitment and Bail,” “After Commitment or Bail and Before the Trial” and “Trial and Its Incidents.” *See generally* Acts of May 27, 1965, 59th Leg., R.S., ch. 722, § 1, 1965 Tex. Gen. Laws 317, 317–18. Chapter 23 is located in the subpart titled “After Commitment or Bail and Before the Trial.” Act of May 27, 1965 at 318; *In re State ex rel. Guarino*, 64 S.W.3d 597, 600 (Tex. App.—Houston [1st Dist.] 2001, no pet.) (observing that “After Commitment or Bail and Before the Trial” includes chapters 19 through 31). While a statutory heading does not limit or expand the plain meaning of a statute’s language, “the heading can inform the inquiry into the Legislature’s intent.” *TIC Energy & Chem., Inc. v. Martin*, 498 S.W.3d 68, 75 (Tex. 2016). Because the context of chapter 23 suggests it applies in a post-commitment or post-bail setting, we believe article 23.01 should be similarly construed. Thus, article 23.01 identifies the court that may issue a *capias*, after commitment or the posting of bail.

Against this backdrop, we consider article 23.04. That article provides: “In misdemeanor cases, the *capias* or summons shall issue from a court having jurisdiction of the case on the filing of an information or complaint.” TEX. CODE CRIM. PROC. art. 23.04. Applying the last-antecedent canon, the phrase “on the filing of an information or complaint” identifies who may issue the *capias* or summons, being the court having jurisdiction of the case on the filing of an information or complaint, not when the *capias* may issue. This interpretation harmonizes articles 23.01 and 23.04 and is consistent with the context of chapter 23 generally. *See In re United Servs. Auto. Ass’n*, 307 S.W.3d 299, 311 (Tex. 2010) (observing the general rule that, where possible, courts construe statutes to harmonize them with other relevant laws, not to find conflict). It further avoids a construction that renders any part of article 23.04 superfluous. *See* TEX. CONST. art. V, § 12(b) (“The presentment of an indictment or information to a court invests the court with jurisdiction of the cause.”). What’s more, if we concluded that “on the filing of an information or complaint” identifies *when* the *capias* may issue, such a construction could seemingly require a *capias* to issue in all misdemeanor cases, even if the judge determines that no probable cause exists, and it could limit the time at which a court could issue a *capias* (i.e., “only upon the filing” and not thereafter). *But see Rodgers v. State*, 500 S.W.3d 682, 684 (Tex. App.—Fort Worth 2016, no pet.) (“An officer must . . . have probable cause for an arrest.”(citation omitted)).

In summary, chapter 23 generally governs post-bail and post-commitment settings. Articles 23.01 and 23.04 both identify the court that may issue a *capias* under those provisions, after commitment or the posting of bail.

S U M M A R Y

A *capias* is a writ from a criminal court directed to any peace officer, commanding the officer to arrest a person accused of an offense and bring the arrested person before that court. Chapter 23 generally applies to post-bail and post-commitment settings. Construed within the context of chapter 23, articles 23.01 and 23.04 identify the court that may issue a *capias*, after commitment or the posting of bail. Thus, the judge of a court that obtains jurisdiction of a misdemeanor case upon the filing of an information or complaint may issue a *capias* after commitment or bail and before trial.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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