



JAMES WARREN SMITH JR.
COUNTY ATTORNEY
FRIO COUNTY

HECTOR M. LOZANO
ASST. COUNTY ATTORNEY
FRIO COUNTY

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March 17, 1999

The Attorney General of Texas
Supreme Court Building
Attn: Opinions Committee
Post Office Box 12548
Austin, Texas 78711-2548
CMRR No. P 440 930 900

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Opinion Committee

Re: Request for attorney's general opinion pursuant to V.T.C.A., Government Code, Section 402.043

Dear Sir/Ma'am:

In accordance with referenced statute, I am requesting an attorney general's opinion. I will first pose the question, state the facts or background, the law that I think is applicable, and my conclusion.

QUESTION:

What can a justice of the peace court lawfully do in order to compel a juvenile charged with failure to attend school to appear in justice court when he/she is not living with a parent, managing conservator, or guardian (as defined respectively in Juvenile Justice Code, [hereinafter "JJC"], section 51.02[9], Family Code, (hereinafter "FC"), section 101.019, and JJC, section 51.02[4])?

BACKGROUND:

Frio County Court, a constitutional court, is designated by the Frio County Juvenile Board as the juvenile court pursuant to JJC, section 51.04. The county has two district courts sitting in Frio County designated as alternative juvenile courts by the Board.

Furthermore the constitutional county court, sitting as a juvenile court by designation, has waived its original jurisdiction over all cases *en masse* involving juvenile truants, alleged to be in violation of JJC, Section 51.03(b)(2) (said waiver for a one year period, subject to one year renewals pursuant to section 54.021(a), JJC), and has transferred its jurisdiction to two justice courts in the county. Also these particular justice courts are exercising their jurisdiction over failure to attend school cases pursuant to Education Code, (hereinafter "EC") section 25.091(b).

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When the attendance officer for the Pearsall Independent School District (selected pursuant to EC, Section 25.088, after conducting an investigation of a juvenile who allegedly fails to attend school, (pursuant to section 25.091, EC), after following the procedures set out in section 25.093, EC, files a complaint against a **parent, guardian, or managing conservator** for thwarting compulsory attendance, (pursuant to section 25.093, EC), in one of the two justice courts, and after the juvenile has been referred for an alleged violation of section 51.03(b)(2), JJC, then the justice of the peace will issue a summons with the statutory warning printed on it to either the parent, guardian or managing conservator (pursuant to section 54.022(e), JJC), to appear personally at the hearing with the juvenile. (Also see, Code of Criminal Procedure, art. 45.331, for further authority to summons a parent, guardian or managing conservator to be present during court with the juvenile).

The situation that often occurs is that an alleged juvenile who fails to attend school does not reside with a parent, guardian, or managing conservator; but will often reside with an aunt, uncle, cousin, grandparents, etc. who could only be classified as "custodians," (as defined in section 51.02(3), JJC).

As is often the case, (as stated, *supra*) juveniles who fail to attend school reside with custodians, as defined, *supra*, will often disregard a citation from a school attendance officer and fail to appear at his/her hearing in justice court. The custodian is not within one of the classes of adults discussed, *supra*, who can be compelled by summons to bring the juvenile to court nor is a custodian a "parent," as previously defined, *supra*, who can be filed on for thwarting compulsory attendance, *supra*.

THE APPLICABLE LAW:

The various statutes cited, *supra*, as well as the following would apply in this situation:

- a. JJC, section 52.027, "Children Taken into Custody for Traffic Offenses, Other Fineable Only Offenses or as a Status Offender;"
- b. JJC, section 52.02, "Release or Delivery to Court;"
- c. JJC, section 53.02, "Release from Detention;" and
- d. JJC, section 54.011, "Detention Hearings for Status Offenders and Nonoffenders."

These statutes, in summary, pertain to "status offenders" who, *inter alia*, are alleged truants but do not pertain, in my opinion, to those truants who have already been referred to a justice court after the juvenile court has waived its original jurisdiction.

These statutes listed and discussed, *supra*, of course, would be the appropriate remedy if the alleged juvenile truant had not been referred to justice court (after waiver of its original jurisdiction by the court). These statutes provide that a status offender may be temporarily detained (section 54.011, JJC) for not more than 24 hours unless released at an administrative hearing pursuant to JJC, section 53.02, to, *inter alia*, a custodian but only upon the custodian's "promise to bring the child before the justice court as requested by the court" (section 52.02[a][1], JJC).

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In those failure to attend school cases where the juvenile court has waived its original jurisdiction and referred the truancy cases to juvenile court but where the alleged truants refuse to appear in court in response to summonses and where the custodians of the juveniles cannot be compelled to produce the juveniles in court in response to their summons, then the remedies set forth in section 51.08, JJC, "Transfer from Criminal Court" under either subsections (b)(1) or (2), depending upon the prior conviction record (or lack thereof) of the juvenile, would be the appropriate avenue for disposition of the cases. Is this not correct?

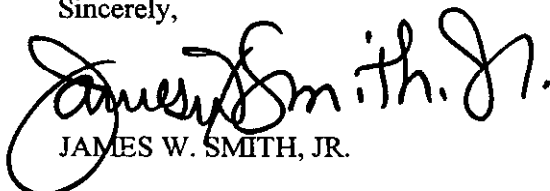
As for a "custodians," as defined, *supra*, he/she would be under no legal obligation to produce alleged truants, residing with them, in justice court but could be summonsed to bring the juveniles to juvenile court (see sections 53.02[d], 52.02[a][1], JJC). Is this not correct?

MY CONCLUSION:

The only apparent remedy for those situations in which a constitutional county court has waived its original jurisdiction over truancy cases, is to refer same to the two justice courts for one year periods (with one-year renewals) and cite the alleged juvenile truants (who are living with custodians) to appear in justice court; and, if they fail to appear; then the justice courts would avail themselves of either subdivisions (b)(1) or (b)(2), section 51.08, JJC, and refer the cases back to juvenile court for disposition. The custodians then would be summonsed (upon a penalty of contempt of court for refusal to do so) to produce the alleged truants in court. This whole procedure is cumbersome, in my opinion. Is there not a more efficient method of utilizing our judicial resources?

Your opinion as to whether this is the correct procedure or not would be very helpful in this on-going continuous problem; and as to whether the county court, sitting as a juvenile court, can waive its original jurisdiction *en masse* and refer the cases to the two justice courts or must the county court waive its original jurisdiction for each case specifically.

Sincerely,



JAMES W. SMITH, JR.

JWSJr/ymm

xc: Files
xc: Hon. James A. Sindon
Justice of the Peace, Precinct No. 2
P.O. Box 751
Pearsall, Texas 78061

xc: Hon. Jack Proctor, Jr.
Justice of the Peace, Precinct No. 4
P.O. Box 2206
Dilley, Texas 78017

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xc: Hon. Carlos A. Garcia (for info. only)
Frio County Judge
Frio County Courthouse
Pearsall, Texas 78061