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OPINION COMMITTEE

RQ-0408-JC

July 25, 2001

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Honorable John Cornyn
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION
2285

Re: Request for an Attorney General Opinion as to whether a Justice of the Peace may order a juvenile to be detained in a Juvenile Detention facility for the offense of contempt and the potential liabilities for the county for detaining those juveniles. Additionally, whether the county may operate a non-secure facility to house juveniles held for contempt.

Dear General Cornyn,

Pursuant to the provisions of section 402.043 of the Government Code, I hereby request an Attorney General's Opinion regarding the power of the Justice Court to order a juvenile to be detained in a county operated juvenile detention facility and further what the potential liability is for the county for detaining such juveniles. As well as, whether the county may operate a non-secure facility to house juveniles for contempt proceedings.

As you are aware, Justice Courts are provided two alternatives for the violations of its orders by juvenile offenders for offenses committed on or before September 1, 2001:

- (1) to hold the juvenile in contempt and impose a fine not to exceed \$500.00, per Section 52.027(h)(1) of the Texas Family Code;
- or,
- (2) to refer the child to the appropriate juvenile court for further action on the contempt, per Section 52.027(h)(2) of the Texas Family Code and Section 45.050(b) of the Texas Code of Criminal Procedure.

Further, Section 52.027(j) of the Texas Family Code explicitly states that:

“A justice or municipal court may not order a child to a term of confinement or imprisonment for contempt of a municipal or justice court order under Subsection (h).”

The 77th Texas Legislature added additional remedies for contempt, under Texas Family Code Section 54.023, that become effective September 1, 2001, and are as follows:

- (1) order the child to be held in a place of non-secure custody designated under Section 52.027 for a single period not to exceed six hours;
- and,
- (2) order the Department of Public Safety to suspend the driver’s license or permit of the child or, if the child does not have license or permit, to deny the issuance of a license or permit to the child and, if the child has a continuing obligation under the court’s order, require that the suspension or denial be effective until the child fully discharges the obligation.

Section 54.023(e), also effective September 1, 2001, reiterates 52.027(j) and states the following:

“A justice or municipal court may not order a child to a term of confinement or imprisonment for contempt of a justice or municipal court order under this section.”

Despite these provisions in the Family Code, at least one of the Justice Courts in this jurisdiction continues to send juveniles to the county detention facility with orders finding the child in contempt of court and assessing a term of confinement of three days in the juvenile detention facility.

It is our office’s contention that these orders are void on their face and that to confine a juvenile under such an order would subject the county to certain liability. The proper remedy for the justice court should be to either have the justice court make a finding of contempt and fine the child as outlined above or to refer the child to the juvenile court for further appropriate action as any new referral would be handled.

However, it is our belief, that a juvenile may be referred to the Juvenile Court as contemplated under Section 52.027(h)(2) and then, according to Texas Family Code Section 52.027(f), the child may be presented or detained in a detention facility. Once the juvenile is presented to the detention facility, it becomes the probation department’s decision to make the determination whether the juvenile should be held or released under Texas Family Code Section 53.02. The question is whether the juvenile should be considered a delinquent offender, a status offender or a non-offender for purposes of determining how a detention hearing should be conducted for the juvenile.

Currently, in this county, if the juvenile is held, he is considered to be a child who is alleged to have engaged in delinquent conduct as defined in Section 51.03(3). Accordingly, he is afforded an initial detention hearing no later than the second working day and subsequent detention hearings every ten working days as outlined in Section 54.01(a) and (h). However, if the juvenile is a status offender or a non-offender, then the procedures for detention hearings are considerably different.

Under Section 51.02(15), a status offender is a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult. That section includes a laundry list of possible offenses that would be included as status offenses, Contempt is not on that list. Section 51.02(8) defines a non-offender as a child who is subject to the jurisdiction of a court under abuse, dependency or neglect or a child who is being held solely for the purposes of deportation. On the face of these two statutes, it does not appear that a juvenile alleged to have engaged in contempt of court would fit into either category but instead would be a child who is alleged to have engaged in delinquent conduct.

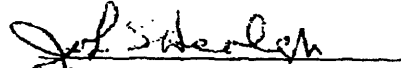
If the child is a non-offender or a status offender, then the conditions of Section 54.011 of the Texas Family Code must be considered. Section 54.011 states that status offenders and non-offenders shall be released from secure detention after 24 hours, excluding hours of a weekend or holiday, and such time may only be extended on the demand of the defense or in order to return the child to his home, if the home is out of state. There is, however, no prohibition from detaining status offenders or non-offenders in non-secure detention facilities. Then, it would seem, that there would be no prohibition for the Juvenile Board or Juvenile Probation to operate non-secure facilities for such offenders.

The questions, then, presented and for which an Attorney General Opinion is requested, are these:

1. May a Justice Court order a juvenile held for a term of detention for the offense of contempt ?
2. What are the liabilities for the county for detaining juveniles ordered to serve a term of detention for contempt by a Justice Court ?
3. If a juvenile is referred to detention for the offense of contempt, is the juvenile's detention hearing to be conducted as that for a child who has engaged in delinquent conduct, as a status offender or as a non-offender?
4. Can the county, through the Juvenile Board and the Juvenile Probation Department, maintain a non-secure facility to house juveniles pursuant to a contempt finding by a Justice of the Peace and if so what type of facility would

be proper?

Respectfully,



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