



RECEIVED
MAR 23 2005
OPINION COMMITTEE

WILLIAM M. JENNINGS
CRIMINAL DISTRICT ATTORNEY
GREGG COUNTY

101 East Methvin Street, Suite 333
LONGVIEW, TEXAS 75601
903-236-8440
FAX 903-236-8490

FILE # ML-44168-05
I.D. # 044168

March 21, 2005

The Honorable Greg Abbott
Attorney General
Office of the Texas Attorney General
P.O. Box 12548
Austin, Texas 78711

RQ-0330-GA

Re: Request for Attorney General Opinion

Dear General Abbott:

Pursuant to Section 402.043 of the Texas Government Code, I submit the following question and brief and request you consider and answer the question presented herein.

Question:

What does it mean to be a District Court "trying criminal cases" in the context of the management of a Community Supervision Department.

Facts

Gregg County has three District Courts. Specifically, the 124th and 188th District Courts have jurisdiction for Gregg County and hear criminal and civil matters. The legislature has also created the 307th District Court, a Family Court, which has jurisdiction for Gregg County. TEX. GOV'T CODE §24.615 (West 1985). Like other Family Courts, the jurisdiction of the 307th District Court is concurrent with the other District Courts in Gregg County. See TEX. GOV'T CODE §24.601 (West 1985 and Supp. 2004). In practice the 307th District Court mostly hears cases involving

adoptions, the dissolution of marriage, the termination of parental rights, protective orders and other matters typically associated with a "Family Court." On occasion, but not on a regular basis, the 307th District Court takes guilty pleas and assesses punishment in criminal matters referred to it by the other District Courts. Furthermore, the 307th District Court hears criminal contempt matters that arise out of unpaid child support obligations. The Court orders some of the defendants found to be in contempt of court to be supervised by the adult probation department

There are two statutory County Courts at Law in Gregg County. Two of the three District Courts and the County Courts at Law in Gregg County have executed "exchange of bench" documents. Cases are routinely transferred between the "exchanging" Courts to alleviate congestion, to resolve conflicts or the appearance of conflicts and to expedite the flow of cases. Criminal cases are not initially assigned to the 307th District Court and for the most part criminal cases are not transferred to the 307th District Court. The other District Courts and the County Courts at Law regularly transfer both civil and criminal matters between themselves.

The Issue

Pursuant to TEX. GOV'T CODE §76.002 (West 1995 and Supp. 2005), Gregg County has established a Community Supervision and Corrections Department (hereinafter department or probation department). The management of the Department has been by the three District Court Judges and the two County Court at Law Judges. A question has arisen about whether the 307th District Court Judge may participate in the management of the Community Supervision Department.

Texas Government Code §76.002(b) provides that the management of the Department is to be by the District Judges and by the statutory Criminal Court at Law Judges "trying criminal cases

that are served by [the department].” It is the term “trying criminal cases” that we are asking for assistance construing.

The term cannot be taken literally. District Court Judges are not required to be trying a criminal case at the same time they manage the department. On the other hand, the term is narrower than mere jurisdiction. For example, the next code section, §76.003(b)(6), provides for the participation of a statutory County Court at Law Judge who exercises criminal jurisdiction in a Judicial Council. This class of Courts exercising criminal jurisdiction could be larger than the class of Courts “trying criminal cases.”

In your analysis, we would respectfully request that you consider certain other eventualities. The facts, as outlined above, are that the 307th District Court infrequently presides over criminal matters. We do not know if the Court has ever “tried” a criminal case as that term is subject to different interpretations. For example, some Courts treat the receipt of a plea of guilt and pronouncement of sentence as a “trial.”

As it stands now, the 307th District Court has probably not presided over a criminal case from indictment to conviction, at least recently, although it has presided over some parts of criminal cases. Is the Judge of the 307th District Court presently able to participate in the management of the probation department? Would it be sufficient to bring the 307th District Court within §76.002 if the Court were to “try” one criminal case a decade, or once ever, or to preside over one guilty plea a year, or ever? Does it matter that the Judge of the 307th District Court has participated in the management of the probation department for the last fourteen (14) years?

There are not cases that construe this portion of section 76.002. The Attorney General has not addressed this provision although one opinion has addressed whether constitutional county law

judges could participate in the management of a probation department. See TEX. ATTY. GEN. OP.
JC-0452.

I respectfully request your opinion on this matter. Thank you in advance for your
assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Jennings', with a large, stylized flourish extending from the end of the signature.

William Jennings
Criminal District Attorney
Gregg County, Texas