



KERR COUNTY ATTORNEY

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The Honorable Greg Abbott
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P.O. Box 12548
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APR 16 2007

OPINION COMMITTEE

FILE # ML-45195-07

I.D. # 45195

RE: Whether the Statutory County Court at Law judge, after being assigned by the Presiding Judge of the Administrative Region to District Court felony cases, has jurisdiction to render judgement.

FACTS:

In an effort to help manage the Kendall County and Kerr County criminal dockets a proposal has been made for the Presiding Judge of the 6th Administrative Judicial Region to assign the County Statutory County Court at Law Judge of each county jurisdiction concurrent with their respective County District Courts for certain classes of felony offenses.

There is concern that the felony judgements rendered by the Statutory Court Judge could be over turned on a subject matter jurisdiction defect.

The Office of Court Administration stated in a March 21, 2007 e-mail that with proper assignment the statutory court judge could hear a case outside the Statutory Court jurisdiction.

The Texas District and County Attorney's Association in a March 6, 2007 e-mail asserts that the Statutory County court's jurisdiction cannot be expanded without legislative action.

AUTHORITY:

Texas Const. Art. V sec. 1 states that the legislature prescribes jurisdiction of all the courts of the state.

Texas Government Code Chapter 25 addresses Statutory County Courts. Gov't Code Section 25.003(a) states that a statutory county court has jurisdiction over all causes and proceedings, civil and criminal, original and appellate, prescribed by law for county courts. Gov't Code Section 26.045 states that a county court has exclusive original jurisdiction of misdemeanors other than class C offenses and official misconduct. Texas Code of Criminal Procedure Section 4.07 establishes the County Court's original jurisdiction as all misdemeanors other than those given to justice court and when the fine imposed shall exceed \$500.

Gov't Code Section 25.132 cites the Kerr County Court at Law Provisions. Paragraph (b) states that in addition to the jurisdiction provided by Gov't Code Section 25.003 and other law, a county court at law has multiple concurrent jurisdictions. "Section 25.003 and other law" is the only part of this statute relevant to our case.

Gov't Code Section 25.1322 cites the Kendall County Court at Law Provisions. Paragraph (a) states that in addition to the jurisdiction provided by Gov't Code Section 25.003 and other law, Section 25.1322(b)(1) specifically excludes felony cases from the court's jurisdiction.

Government Code Chapter 74 is the Court Administration Act. Both Kendall and Kerr counties are part of the 6^m Administrative Judicial Region. See Gov't Code Section 74.042(G) The presiding judge of the administrative region may perform the acts necessary to carry out the provisions of this chapter and to improve the management of the court system and the administration of justice. See Gov't Code 74.047 Judges may be assigned in the manner provided by this chapter to hold court when necessary to dispose of accumulated business in the region. See Gov't Code 74.052 An active statutory county court judge may be assigned to hear a matter pending in a district court so long as the matter is pending in the county of the judge's residence. See Gov't Code 74.054(a) and (b). A judge assigned by the presiding judge to a court in the same administrative region shall serve. See Gov't Code 74.058 A judge assigned under the provisions of Chapter 74 has all the powers of the judge of the court to which he was assigned. See Gov't Code 74.059 A statutory county court judge may hear and determine a matter pending in any district or statutory court in the county regardless of whether the matter is preliminary or final or whether there is a judgment in the matter. The judge may sign a judgment or order in any of the courts regardless of whether the case is transferred. The judgment, order, or action is valid and binding as if the case were pending in the court of the judge who acts in the matter. The judges shall try any case and hear any proceeding as assigned by the local administrative judge. See Gov't Code 74.094(a)(b)

Beard v. Beard, 49S.W.3d 40, (App.-Waco 2001: pet. den'd) The Court was addressing the issue of whether or not assigning a second trial judge to a case deprived the first judge of authority to execute a final decree. The Court in finding concurrent judicial authority cited Tex. Gov't Code Sections 74.059 and 74.094 as follows. An assigned judge's authority depends upon a valid assignment by the presiding judge. The scope and extent of that authority depends on the terms and conditions of the assignment. An assigned judge sits in all other respects as the judge of the court to which he is assigned. A judge assigned to a district or statutory court may hear and determine a matter pending in any district or statutory court in the county.

Texas Animal Health Commission v. Garza, 980S.W.2d 776, (App.-San Antonio, 1998) The court reviewed a case wherein it was alleged the county court judge wrongly heard a case and issued orders even though it was outside his court's subject matter jurisdiction. The Court found that Tex. Gov't Code Section 74.094(a) authorized the county court at law judge to hear cases and sign orders and judgments pending in district courts in the same county. The court found that judges within the same county could exchange benches and sign judgments or orders without transferring the cases and without regard for the judge's authority to act in his own court. The Court found it despositive that the Texas Supreme Court in addressing a related issue

specifically cited the Legislature's 1987 decision to repeal a provision that the rules did not authorize a judge to act in a case over which his own court lack jurisdiction. The Texas Supreme Court in *Camacho v. Samaniego*, 831 S.W.2d 804, 811 (Tex.1992) then interpreted Tex. Gov't Code Section 74.094(a) "as allowing a statutory county court judge to hear, determine, and sign a judgment pending in district court outside his court's jurisdiction without transferring the case."

In Re Tommy Nash, 13S.W.3d 894, (App.-Beaumont, 2000) The appellant argued that the contempt order was illegal because the county court at law judge was without authority or jurisdiction. The court found that Tex. Gov't Code Sections 74.054 and 74.094 allow judges of different courts in a county to exchange benches and transfer cases. The Court found that a presiding judge of a judicial administrative region may appoint a county court at law judge to sit for a district judge in a district court case in the same county. However, the Court did find that the judge's authority was limited by any restrictive language in the assignment.

In Re: Shoreline Gas, Inc., 13-06-001-CV, (App.-Corpus Christi, 2006) The addressed the issue of transfer versus assignment. The Court found that under Gov't Code Section 74.094 a presiding judge of the judicial administrative region may appoint a county court at law judge to sit for a district judge in a district court case in the same county. In contrast, the Court noted that the Texas Constitution and the Texas Government Code give district judges broad discretion to exchange benches or transfer cases, but that transfers of cases from district court to county court at law are subject to local rules.

Ex Parte Charaka Dharmagunaratne, 950 S.W.2d 140, (App- Fort Worth 2nd, 1997) Appellants were indicted on felony offense and challenged the validity of a Tarrant County trial court. The Court citing Gov't Code Section 74.052 and 74.056(a) found that the presiding judge of the administrative region could assign judges when necessary to dispose of accumulated business. The Court found that "accumulated business" did not require the cases to be a specific age in order to qualify by disposition by an assigned judge and found that cases constitute "accumulated business" the day they are filed with the court. The Court also found that judges properly sitting by assignment may preside over a court regardless of whether the regular district judge of the court was present and trying another case at the same time.

Taiwan Shrimp Farm Village Assn. V. U.S.A. Shrimp Farm Development, Inc. 915 S.W.2d 61 (App.- Corpus Christi, 1996) The County Court at Law judge was assigned by the Presiding Judge of the Judicial Administrative Region to preside over a case in district court. The appellants argued that a judge may not sit or act in a case unless the case falls within the jurisdiction of that judge's court. The Court found that Gov't Code Sections 74.052(a), 74.054(a)(1) and 74.054(b) establish that a properly assigned judge to hear a matter within the county of his residence has all the powers of the judge of the court to which he is assigned.

Lopez v. State, 57 S.W.3d 625, (App.-Corpus Christi, 2001) The appellant was charged with a felony offense and the County Court at Law judge was assigned by the Presiding Judge of the Administrative region to preside over district court for a set period of time seeming to correspond to the defendant's trial date. The trial was delayed and the defendant challenged the trial court's authority. The Court observed that in addition to the court's jurisdiction the judge

must have authority to preside over the case. *Johnson v. State*, 869 S.W.2d 347, 349(Tex. Crim. App. 1994) A conviction is void if the judge was constitutionally or statutorily disqualified, or lacks qualification. The Court cited Tex. Gov't Code Sections 74.054(a)(1) and 74.054(b) for the premises that a statutory county judge may be assigned to sit in another court by the presiding judge of the administrative region and the only statutory limitation is that the judge may not be assigned to hear a matter pending in a district court outside the county of the judge's residence.

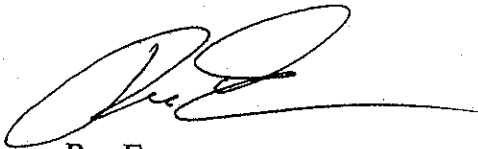
ARGUMENT:

Chapter 74 is clear and unequivocal in establishing the Presiding Judge of the Judicial Region's authority to assign judges as deemed appropriate to manage the court system and administer justice through the disposal of accumulated business. "Accumulated business" has been defined by the courts to include all filed cases regardless of age. Gov't Code Section 74.054(a) and (b) state that an active statutory county court judge may be assigned to hear a matter pending in district court so long as it is in the judge's county of residence. Gov't Code Section 74.059 grants the assigned judge all the powers of the judge of the court to which he was assigned and the legislature specifically removed the jurisdictional barrier in 1987.

There is not any restrictive language in the statutes limiting the assignment of judges to accumulated business involving civil cases only. Nor since the 1987 legislature do the statutes limit the assigned judge's jurisdiction. In addition, the statutes specifically say the assigned judge "has all the powers of the judge of the court to which he is assigned."

I respectfully submit that the Presiding Judge of the Judicial Administrative region may properly assign a sitting statutory court judge to hear district court criminal cases originating from the assigned judge's county of residence, and that the assigned judge will have the authority to adjudicate said cases.

Thank you for you time and consideration.



Rex Emerson