

SENATOR JEFF WENTWORTH
SENATE DISTRICT 25

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OPINION COMMITTEE

*The Senate of
The State of Texas*



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**COUNTIES IN
SENATE DISTRICT 25**

Bexar (north)	Hays
Comal	Kendall
Guadalupe	Travis (south)

November 8, 2011

The Honorable Greg Abbott
Attorney General of Texas
Attn: Opinion Committee
Post Office Box 12548
Austin, Texas 78711-2548

FILE # ML-46893-11

I.D. # 46893

RQ-1024-GA

RE: Statutory authority of a constable relating to outstanding warrants issued by a justice court.

Dear General Abbott:

As chairman of the Select Committee on Open Government, I respectfully request an opinion on the following:

1. Does a constable have authority within existing law to offer payment arrangements to, or accept partial payment from, defendants with outstanding warrants issued by a justice court?
2. Does a constable have authority within existing law to accept in-person payments (partial or in their entirety) for one offense while not arresting the defendant on other outstanding warrants issued by a justice court?
3. Does a constable have authority within existing law to establish a policy for his/her administration that effectively or intentionally reduces the emphasis on the execution of warrants issued by a justice court for any period of time (i.e., if the administration has met its budget requirements for the current year and makes a policy decision to reduce emphasis on warrants and puts off the execution of outstanding warrants to another budget year)?



4. Does a constable or his/her administration have authority within existing law to direct that some defendants with outstanding warrants issued by a justice court be placed in Tiburon or any other inter-agency law enforcement reporting systems, while others were not (effectively limiting the ability of other areas of law enforcement to have knowledge of some outstanding warrants)?

If a criminal defendant does not appear on or before his initial appearance date, the court has discretion on whether to send the case straight to collections; however, at that time, the defendant may be issued a Failure to Appear and a warrant may be issued on the Failure to Appear and on the underlying charge (unless the defendant is under 17 years of age). TEX. CRIM. PROC. CODE ART. 45.014. The court may also deny the renewal of defendant's driver license. TEX. TRANSP. CODE § 706.002 and 706.006.

According to TEX. CRIM. PROC. CODE ART. 45.014(a), when a sworn complaint or affidavit based on probable cause has been filed before the justice or municipal court, the justice or judge may issue a warrant for the arrest of the accused and deliver the same to the proper officer to be executed. Hence, a justice court judge has the authority to issue arrest warrants.

The court's powers are governed by TEX. GOV'T. CODE §§ 21.001(a), which provides that a court has all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue the writs and orders necessary or proper in aid of its jurisdiction. The court, therefore, has all the authority it needs to enforce its orders, including warrants.

A constable is considered a "peace officer" as that term is defined by TEX. CRIM. PROC. CODE ART. 2.12. Peace officers, in general, have the duties and powers enumerated by TEX. CRIM. PROC. CODE ART. 2.13, including executing all lawful process issued to the officer by any magistrate or court. Furthermore, TEX. LOCAL GOV'T CODE §86.021 provides that a constable's specific duties are to execute and return all process, warrants and precepts directed to them, and to attend each justice court held in the precinct.

Furthermore, the duties of a constable were specifically covered by the Texas Attorney General in two separate opinions, Texas Att'y Gen. Op. No. GA-0349 (2005) and JC-0413 (2001).

The Honorable Greg Abbott
November 8, 2011
Page 3

Texas Att'y Gen. Op. No. GA-0349 states, in pertinent part, "Although all of these police officers have countywide jurisdiction, each category of peace officer has a distinct law enforcement mission. . . . Constables' law enforcement activities must not infringe on constables' myriad statutory duties such as the mandatory duty to attend each session of the precinct's justice court and execute all civil and criminal process directed to the constable."

In addition, pursuant to Texas Att'y Gen. Op. No. JC-0413, "All duties assigned by the legislature to a public officer, without exception, must be performed. . . . Should a constable believe that he has insufficient time to fulfill both duties, he may apply to the commissioners court under section 86.011 of the Local Government Code for the appointment of a deputy."

Any "law enforcement activities," therefore, must not interfere with a constable's statutory duty to attend each session of justice court and execute all civil and criminal process directed to them.

All warrants issued out of Justice of the Peace Court, Travis County, contain the following language:

To Any Peace Officer of the State of Texas: Greetings; You are commanded to arrest [Defendant's Name] accused of the offense of [offense] against the laws of this state by sworn complaint filed before me. YOU ARE FURTHER ORDERED to take the accused without unnecessary delay before some magistrate of the county where arrested to be committed to jail and permitted to make bail if allowed by law. You are ordered upon execution to return this warrant to the office from which it issued. HEREIN FAIL NOT, and of this writ make due return as the law directs.

Accordingly, whichever peace officer is chosen to serve the warrant must do so as quickly as possible, "without unnecessary delay."

Further, TEX. LOCAL GOV'T CODE § 86.024, relating to failure to execute process, and TEX. GOV'T CODE § 21.002, relating to contempt of court, specify the consequences should a constable fail to execute this process. It is arguable that only TEX. LOCAL GOV'T CODE § 86.024 would apply in this instance, because it relates to the specific situation in question, while TEX. GOV'T CODE § 21.002(a-f) is more general. Accordingly, a constable shall be punished for contempt should he/she fail

The Honorable Greg Abbott
November 8, 2011
Page 4

or refuse to execute and return a warrant; he/she must be given 10 days' notice of a motion for contempt, and punishment must be a fine of between \$10 and \$100, with costs.

As exemplified above, several statutes exist regarding the duties of a constable in relation to the serving of outstanding warrants issued by a justice court; however, it is unclear whether authority exists to allow a peace officer of any kind to do anything with a warrant except serve it. Specifically, it is unclear whether a peace officer has the authority to choose when to serve a warrant, to put off serving warrants for another budget year, to choose which warrants to serve, or to offer any kind of payment plan, including the acceptance of partial payments. Further, it is unclear whether a peace officer has the authority to do any of the above for some defendants and not others.

Despite lack of explicit statutory authority, however, it is my understanding that several constables in Travis County currently engage in several of the above-mentioned practices, including, specifically, allowing defendants with multiple warrants to pay them off one at a time, allowing partial payments over time, and allowing payment on some, but not all, outstanding warrants.

It is my hope that an opinion on the appropriate legal interpretation of the statutory authority given to a constable when serving a warrant issued by a justice court will bring to a conclusion the debate over the legality of such practices.

I respectfully request an opinion on the foregoing issue. Thank you for your assistance in this matter.

Sincerely,



Jeff Wentworth
Chairman
Senate Committee on Open Government

JW/kko