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Pursuant to Texas Government Code Section 402.042, I hereby request a Texas Attorney General's Opinion concerning the following question:

Whether in misdemeanor cases the trial court has authority to issue a capias on the filing of an information or complaint under Tex. Code Crim. Proc. art. 23.04, but before commitment or bail under Tex. Code Crim. Proc. art. 23.01?

Respectfully submitted,

/s/ *Mark A. Gonzalez*

Mark A. Gonzalez

BRIEF IN SUPPORT OF REQUEST

The present issue arises as a result of the reluctance of some County Court as Law Judges to issue a *capias* in non-arrest misdemeanor cases, based on their belief that they have no jurisdiction prior to commitment or bail.

Two potentially conflicting provisions of the Texas Code of Criminal Procedure are relevant:

In this chapter, a “*capias*” is a writ that is:

(1) issued by a judge of the court having jurisdiction of a case *after commitment or bail and before trial*, or by a clerk at the direction of the judge; ...

Tex. Code Crim. Pro. Ann. art. 23.01 (emphasis added).

In misdemeanor cases, the *capias* or summons shall issue from a court having jurisdiction of the case on the filing of an information or complaint. The summons shall be issued only upon request of the attorney representing the State and on the determination of probable cause by the judge, and shall follow the same form and procedure as in a felony case.

Tex. Code Crim. Pro. Ann. art. 23.04.

In non-arrest misdemeanor cases, Article 23.04 appears to require the judge to issue a *capias* on the filing of an information or complaint absent request by the State for a summons. Yet, Article 23.01 may be read to define “*capias*” as a writ that may be issued only after the defendant is committed to jail or has posted bail, events that will not have occurred in non-arrest cases.

The State would suggest, however, that an alternative reading of Article 23.01 allows for the trial judge to issue the *capias* upon gaining jurisdiction of

the case by filing of the information or complaint, and thus removes any conflict with Article 23.04.

The issue is whether the qualifying phrase “after commitment or bail and before trial” modifies “issued” or “a judge of the court having jurisdiction of a case.” This distinction leads to the following possible interpretations:

A. A *capias* is a writ “issued – after commitment or bail and before trial.” This interpretation would, in other words, limit the issuance of a *capias* to that time period after commitment or bail and before trial.

B. A *capias* is a writ issued “by a judge of the court having jurisdiction of a case - after commitment or bail and before trial” This interpretation would limit the *capias* not by time of issuance, but to the judge who will have jurisdiction of the underlying case after the defendant is arrested and before he is tried. This interpretation, in other words, suggests an intent to limit the issuance of the *capias* to the judge who will actually be presiding over the pre-trial phase of the case.

When two statutes address generally the same subject and are “*in pari materia*,” there is a preference for interpreting each in a manner that would harmonize any potential conflict. *See Crawford v. State*, 509 S.W.3d 359, 362 (Tex. Crim. App. 2017). However, if it is not possible to harmonize the two statutes, the more specific statute will generally control. *Id.* at 361.

In the present case, the State’s interpretation (B. above) would harmonize the two statutes. In addition, even if this interpretation does not harmonize them, the principles of *in pari materia* would allow the more specific statute concerning issuance of a *capias* on filing of an information or complaint, to control over the more general provisions defining *capiases* as a whole.

For these reasons, the State believes that the trial court has authority to issue a capias on the filing of an information or complaint in non-arrest cases in spite of the fact that the defendant has not yet been committed to jail or posted bail.