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January 28, 2000

RQ-0180-JC/306 Liz Robinson

Hon. John Cornyn
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

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Re: Request for Attorney General's Opinion

Office of the Attorney General
Executive Administration (001)
P.O. Box 12548
Austin, TX 78711

Dear General Cornyn:

I am requesting an opinion as to whether or not the authority exists for the State to insist on a jury trial in a juvenile proceeding by withholding its approval of a waiver of jury trial by a juvenile and the juvenile's attorney.

Under the Family Code, a child facing juvenile adjudication has a right to trial by jury. *Tex. Fam. Code Ann. sec. 54.03(b)(6) (Vernon 1996)*. It is further provided that: "Trial shall be by jury unless jury is waived in accordance with Section 51.09 of this code..." *Tex. Fam. Code Ann. sec. 54.03(c) (Vernon 1996)*.

Section 51.09 provides that any right granted a child under the Juvenile Code may be waived if the waiver is made by the child and the child's attorney, and the waiver is in writing or recorded, and is an informed, voluntary waiver. *Tex. Fam. Code Ann. sec. 51.09 (Vernon Pamph. 2000)*. There is no provision in the Juvenile Code that addresses the right or authority of the State with respect to such waiver.

Under the Code of Criminal Procedure, with respect to adults who waive a jury trial, any waiver requires the consent of the State. *Tex. Crim. Proc. Code Ann. art. 1.13(a) (Vernon Pamph. 2000)*. Prior to 1991, when Article 1.13 was amended to encompass "any offense" rather than just non-capital felony offenses, there was no law covering waivers of jury trials for misdemeanor offenses, and generally the felony procedure was followed without any statutory guidance. I have found nothing similar in the Family Code.

Section 51.17 of the Juvenile Code sets out the basic authority that will govern juvenile proceedings:

- (a) Except for the burden of proof to be borne by the state in adjudicating a child to be delinquent or in need of supervision under Section 54.03(f) or otherwise when in conflict with a provision of this title, the Texas Rules of Civil Procedure govern proceedings under this title.

(b) Discovery in a proceeding under this title is governed by the Code of Criminal Procedure and by case decisions in criminal cases.

(c) Except as otherwise provided by this title, the Texas Rules of Criminal Evidence and Chapter 38, Code of Criminal Procedure, apply in a judicial proceeding under this title.

Tex. Fam. Code Ann. art. 51.17 (Vernon 1996).

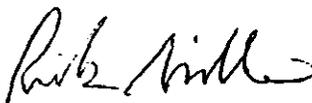
Reading this literally, it would seem that the right of the juvenile to a jury trial (and to waive it) rests with the Family Code, while, because any mention of it is absent in the Family Code, the right of the State to a jury trial in a juvenile proceeding is necessarily found in the Texas Rules of Civil Procedure. If that is so, it would appear that Rule 216 would govern in such an event, requiring the State to make a written request for a jury trial and to pay a jury fee. See *Tex. R. Civ. P. 216*. But the State would still have a right to insist on a jury trial, even if not mentioned in the Juvenile Code.

Also, it is not clear if the "quasi-criminal" status, as juvenile proceedings have been called, could be relied on in such a case to recognize the right of the State to insist on a jury trial in the face of a waiver of jury trial by the juvenile and the juvenile's attorney. However, Article 51.17 of the Juvenile Code seems to foreclose reliance on the Code of Criminal Procedure unless it relates to burden of proof, discovery, or evidentiary proceedings.

Common sense would seem to dictate that the State cannot be deprived of the right to a jury trial, and it would be appropriate to follow the procedure found in adult proceedings, yet the confusion of the law in this circumstance raises the question. Your opinion would be very helpful and of much guidance to prosecutors and juvenile courts across the state.

Should you require additional information, please let me know.

Yours very truly,



Rick Miller
Bell County Attorney

RM:tg