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OPINION COMMITTEE

FILE # ML-41704-00
I.D. # 41704

October 11, 2000

Honorable John Cornyn
Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711-2548

FILE # _____
I.D. # _____

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OPEN RECORDS DIVISION

Re: Request for Attorney General Opinion regarding the criminal jurisdiction
of the 406th District Court, Webb County, Texas

Dear General Cornyn:

The 406th District Court is a newly created district court of Webb County¹, to take effect January 1, 2001.² The new court's enabling legislation, found at V.T.C.A. Government Code § 24.551 (West Supp. 2000, eff. January 1, 2001), entitled "406th Judicial District (Webb County)" provides as follows:

- (a) The 406th Judicial District is composed of Webb County.
- (b) The 406th District Court shall give preference to cases involving family violence, cases under the Family Code, and cases under the Health and Safety Code.

This legislation omits mention of criminal jurisdiction of the new court.

Other jurisdiction of the 406th District Court is found in other statutes. V.T.C.A. Government Code § 24.151 (West Supp. 2000) entitled "49th Judicial District (Webb and Zapata Counties)" provides as follows:

- (a) The 49th Judicial District is comprised of Webb and Zapata Counties.

¹ V.T.C.A. Government Code § 24.551(Vernon Supp. 2000).

² Sections 25 and 26 of Acts 1999, 76th Leg., ch. 1377.

- ...
- (d) Indictments returned to the 49th District Court in Webb County may also be returned to any other court in Webb County with the appropriate criminal jurisdiction.
- ...
- (f) In Webb County, the clerk of the district courts shall file all civil cases, except tax suits, on the Clerk's Civil File Docket and shall number the cases consecutively. All tax suits shall be assigned to the 49th District Court. **All cases involving family violence, all cases under the Family Code, and all cases under the Health and Safety Code shall be assigned and docketed in the 406th District Court.** All other *civil cases* shall be assigned and docketed at random by the district clerk... (emphasis added)(*Text of subsec. (f) effective January 1, 2001*)

No mention or reference is made to criminal jurisdiction of the 406th District Court, in this legislation either, except by omission.

The enabling legislation for the other district courts of Webb County, the 49th District Court, the 111th District Court and the 341st District Court, make specific reference to their criminal jurisdiction:

49th Judicial District Court

"Indictments returned to the 49th District Court in Webb County may also be returned to any other court in Webb County with the appropriate criminal jurisdiction." V.T.C.A. Government Code §24.151(d) (West Supp. 2000)³.

111th Judicial District Court

"The judge of the 111th District court may not impanel grand juries unless he considers it necessary" V.T.C.A. Government Code §24.213(c) (West 1988).

341st Judicial District Court

"The judge of the 341st District Court may select jury commissioners and impanel grand juries in Webb County. The judge of the 341st District Court may alternate the drawing of grand juries with the judge of any other district court in the county . . . Indictments returned in Webb County may also be returned to the 49th District Court or the 111th District Court." V.T.C.A. Government Code § 24.487(b) (West 1988)

³ It should be noted that V.T.C.A. Government Code § 24.151(b) previously provided that "in addition to other jurisdiction provided by law, *each district court* in Webb County has the civil and criminal jurisdiction of a county court"(emphasis added). V.T.C.A. Government Code § 24.151(b) now provides that "In addition to other jurisdiction provided by law, *the 49th District Court* has the civil and criminal jurisdiction of a county court" (Vernon Supp. 2000)(emphasis added).

Legislative authority to create district courts and conform their jurisdiction is derived from Article 5, § 1 of the Texas Constitution:

“ . . . The legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto.” V.T.C.A. Constitution Article 5, Section 1 (West 1993).

The interpretive commentary to this article, relates that:

“ . . . The provision authorizing the legislature to establish such other courts as it may deem necessary and to prescribe the jurisdiction and organization thereof establishes a more elastic judicial system, and was a principal purpose for the adoption of the amendment in 1891. It had been held prior to the adoption that the original Article V established a complete judicial system, and all of the judicial power of the state was vested in the courts named in Section 1 thereof. See *Ex parte Towles*, 48 T. 413 (1877). This provision, then, was incorporated to enable the legislature to adapt the judicial system to changing conditions so that ‘the needs of the state which might develop in its future growth could be provided for by the legislature from time to time. *Harris County v. Stewart*, 91 T. 133, 41 S.W.650 (1897).”

It appears from the plain language of this section that a district court acquires criminal jurisdiction only when it is either specifically conferred by the legislature on that individual court or on a class of courts. Neither the new court’s enabling legislation, found at V.T.C.A. Government Code § 24.551 (West Supp. 2000, eff. January 1, 2001) nor other statutory references to the new court, specifically V.T.C.A. Government Code § 24.151 (West Supp. 2000), contains clear language specifically conferring criminal jurisdiction on the 406th District Court.

However, Article 5, Section 8 of the Texas Constitution may mandate a different result. This section provides that “ . . . District court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body.” V.T.C.A. Constitution Article 5, Section 8 (West 1993). Further, it has been held that this jurisdiction includes criminal actions. *Ex parte Cantu* (App. 4 Dist. 1995) 913 S.W. 701, petition for discretionary review refused.

Article 4.01 of the Texas Code of Criminal Procedure may also be invoked to argue that the by virtue of its creation, and that the absence of a provision negating criminal jurisdiction to the 406th District Court, the court has criminal jurisdiction.⁴ Since Article 4.01 of the Texas Code of Criminal Procedure, which was enacted prior to the creation of the 406th District Court and the new legislation creating the 406th District Court is more specific than the general

⁴ V.T.C.A. Code of Criminal Procedure, Article 4.01 (Vernon Supp.2000);

language of Article 4.01, the more specific language of the latter enacted statute would therefore be controlling⁵.

An uncertainty arises as to whether the 406th District Court has criminal jurisdiction owing to:

1. Silence in the enabling legislation as to criminal matters⁶. The enacting legislation does not specifically confer nor does it specifically exclude criminal jurisdiction on the 406th District Court.
2. The language in the statute to "give preference to" family violence cases, cases under the Family Code, and all cases under the Health and Safety Code.⁷
3. The mandatory language in V.T.C.A. Government Code § 24.151(f) (Vernon Supp. 2000, eff. January 1, 2001), which provides that ". . . **All cases involving family violence, all cases under the Family Code, and all cases under the Health and Safety Code shall be assigned and docketed in the 406th District Court. All other civil cases shall be assigned and docketed at random by the district clerk.**" (emphasis added);
4. The language in Section 24.151(d) of the Government Code pertaining to the 49th District Court provides that "Indictments returned to the 49th District Court in Webb County

⁵ V.T.C.A. Code Construction Act, §311.025.

⁶ As previously stated, the other district courts of Webb County which includes provisions for the impaneling of grand juries and concurrent jurisdiction:

a. Section 24.151(d) of the Government Code pertaining to the 49th District Court provides that "Indictments returned to the 49th District Court in Webb County may also be returned to any other court in Webb County *with the appropriate criminal jurisdiction*" (emphasis added). V.T.C.A. Government Code § 24.151(d) (Vernon Supp. 2000) See also footnote number 3.

b. V.T.C.A. Government Code § 24.213(c) & (d) provide that the judge of the 111th District court may not impanel grand juries unless he considers it necessary and subsection (d) provides that *Section 24.151, relating to the 49th District Court, contains provisions applicable to both that court and the 111th District Court in Webb County* (emphasis added)

b. V.T.C.A. Government Code § 24.487(b) pertaining to the 341st District Court provides that the judge of the 341st District Court may alternate the drawing of grand juries with the judge of any other district courts in the county. It further states that "Indictments returned in Webb County may also be returned to the 49th District Court or the 111th District Court". It further provides that *the 341st "has concurrent jurisdiction with the 49th District Court in all tax suits and cases.*" (emphasis added)

⁷ V.T.C.A. Government Code § 24.551 (Vernon Supp. 2000, eff. January 1, 2001)

may also be returned to any other court in Webb County *with the appropriate criminal jurisdiction*"(emphasis added)⁸;

5. The language of V.T.C.A. Government Code § 24.151(b) which previously provided that "in addition to other jurisdiction provided by law, *each district court* in Webb County has the civil and criminal jurisdiction of a county court" which was amended and now provides that "In addition to other jurisdiction provided by law, *the 49th District Court* has the civil and criminal jurisdiction of a county court" V.T.C.A. Government Code § 24.151(b) (Vernon Supp. 2000)(emphasis added);

6. Texas Code of Criminal Procedure, Article 4.01 which provides the general proposition that the district courts have jurisdiction in criminal actions;

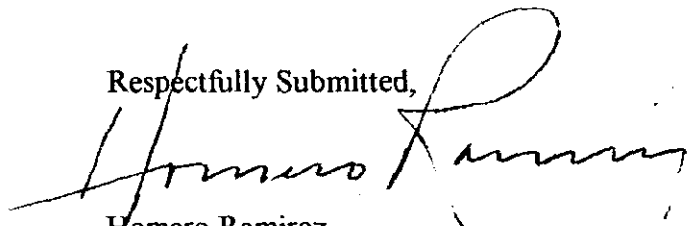
7. Article V. § 1 of the Texas Constitution provides that the *legislature may establish such other courts* as it deems necessary *and prescribe the jurisdiction* and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereof (emphasis added);

8. The interpretive commentary of Article V. § 1, where it is stated that "... this provision, then, was incorporated to enable the legislature to adapt the judicial system to changing conditions so that the needs of the state which might develop in its future growth could be provided for by the legislature from time to time;" and

9. Article V. § 8, of the Texas Constitution wherein such section it is stated that "The district courts have exclusive jurisdiction over *all causes of action not explicitly reserved to other courts*" (emphasis added);

I am therefore respectfully requesting an opinion to ascertain the civil and criminal jurisdiction of the 406th Judicial District Court and what limitations, if any, the legislature has imposed on the 406th District Court in criminal matters.

Respectfully Submitted,



Homero Ramirez
Webb County Attorney

⁸ See footnote number 3.