CHARLES A. ROSENTHAL, JR.
DISTRICT ATTORNEY
HARRIS COUNTY, TEXAS

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RQ-0072-GA

General Gregg Abbott
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request to withdraw portions of Attorney General Opinion No. JC-0454.

Dear General Abbott:

Pursuant to the provisions of section 402.043 of the Government Code, I am requesting that you consider modifying Attorney General Opinion No. JC-0454, issued January 28, 2002, with regard to the legality of detention of juveniles prior to a formal adjudication of a contempt charge.

Opinion No. JC-0454 addresses a number of issues related to a justice court's options in dealing with a juvenile defendant who fails to comply with its orders. The opinion correctly concludes that one of the statutory avenues avail-able to a justice court is to refer a child to the appropriate juvenile court for a formal adjudication of delinquent conduct based upon the child's violation of the justice court's order.

However, the opinion goes on to state that the juvenile may not be confined for contempt prior to a detention hearing because of Section 53.02 of the Family Code. It also indicates that contempt is not a reason a child may be detained after the detention hearing conducted pursuant to Section 54.01 of the Family Code. Additionally, the opinion concludes that a child may only be confined for contempt after being adjudicated for delinquent conduct at a disposition hearing. I respectfully suggest that none of these statements are correct, for the reasons stated in the attached.

Therefore, I respectfully request that your office reconsider Opinion No. JC-0454, to the extent that the opinion may contain inaccuracies in its discussion of the legality of confinement of juveniles prior to an adjudication of delinquent conduct.

Your consideration is greatly appreciated.

Sincerely,

Charles A. Rosenthal, Jr.

1201 Franklin Street, Suite 600, Houston, Texas 77002

IN RE Attorney General
Opinion No. JC-0454

BRIEF IN SUPPORT OF REQUEST TO WITHDRAW
PORTIONS OF ATTORNEY GENERAL OPINION NO. JC-0454

The Texas Attorney General issued Opinion No. JC-0454 on January 28, 2002, in response to a request for an opinion from Fort Bend County District Attorney John Healy, RQ-0408-JC. That opinion dealt with juvenile contempt cases which originate in a justice of the peace court. Although the opinion was largely correct with regard to the law pertaining to those cases, it also included several inaccuracies with regard to the legality of detention of juveniles on contempt charges, which are significant because they unnecessarily limit the authority of a district court to use all available resources under the law of Texas in dealing with delinquent conduct cases.

The opinion states:

> . . . Moreover, section 53.02 of the Family Code specifies the reasons for which a child may be detained prior to a detention hearing and contempt is not one of them. Tex. Fam. Code Ann. Sec 53.02 (Vernon Supp. 2002). Section 54.01 of the Family Code sets forth the reasons that a child may be detained at a detention hearing, and, again, contempt is not one of them. Id. Sec. 54.01. In fact, only after a child has been adjudicated by a juvenile court as engaging in delinquent conduct for violating a court order and is held to be in contempt, may the child be confined if the court so orders at the later disposition hearing. Id. Sec. 51.03 (a) (2) (defining delinquent conduct to include "conduct that violates a lawful order of a municipal court or justice court under circumstances that would constitute contempt of that court"); 54.03 (adjudication hearing); 54.04 (disposition hearing).

It is clear from the sections of the Texas Family Code that are cited in the opinion that it is, at this point, alluding to delinquent conduct that constitutes a violation of a lawful order of a municipal court or a justice court under circumstances that would constitute contempt of that court, as described in section 51.03(a)(2) of the Code. The opinion is accurate in concluding that sections 53.02 and 54.01 of the Family Code specify the reasons for which a child may be

detained prior to or at a detention hearing. However, it is respectfully suggested that the opinion is inaccurate in suggesting that a particular type of delinquent conduct must be expressly listed in section 53.02 or 54.01, or pre-disposition detention for that conduct is not authorized. To the contrary, any type of delinquent conduct might form a basis for pre-disposition detention if the additional requirements of section 53.02 or 54.01 are met.

The statutory reasons for detention, which are set out in section 53.02, are as follows:

> 1) the child is likely to abscond or be removed from the jurisdiction of the court;
> 2) suitable supervision, care, or protection for the child is not being provided by a parent, guardian, custodian, or other person;
> 3) the child has no parent, guardian, custodian, or other person able to return the child to the court when required;
> 4) the child may be dangerous to himself or herself or the child may threaten the safety of the public if released;
> 5) the child has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released; or
> 5) the child's detention is required under Subsection (f) [child alleged to have engaged in delinquent conduct and to have used, possessed, or exhibited a firearm] . . .

Section 54.01 of the Family Code describes the following as a basis for detention:

> (1) he is likely to abscond or be removed from the jurisdiction of the court;
> (2) suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person;
> (3) he has no parent, guardian, custodian, or other person able to return him to the court when required;
> (4) he may be dangerous to himself or may threaten the safety of the public if released; or
> (5) he has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released.

These statutory reasons for detention relate not to the nature of the conduct of the child, but to other circumstances of the child. Thus the reasoning of Opinion No. JC-0454 would apply to other types of delinquent conduct which are not specifically listed in section 53.02 or 54.01, including capital murder and aggravated sexual assault of a child. Reasoning that would preclude detention for serious felony offenses is plainly incorrect.

Actually, a child may be detained for any of the following types of delinquent conduct which are set forth in section 51.03:

> 1) conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail;
> 2) conduct that violates a lawful order of a municipal court or justice court under the circumstances that would constitute contempt of that court;
> 3) conduct that violates Section 49.04, 49.05; 49.06, 49.07, or 49.08, Penal Code; or
> 4) conduct that violates Section 106.041, Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor (third or subsequent offense).

The sections entitled "Release from Detention," sec. 53.02, or "Detention Hearing," sec. 54.01, do not list any of the above types of conduct, including contempt, as being excluded from potential detention. Thus, the only possible construction is that detention is available for all four types of delinquent conduct listed in section 51.03, if one of the non-release factors set out in 53.02 or 54.01 is present. This leads to the conclusion that a child who engages in conduct that violates a lawful order of a municipal court or justice court is eligible for **pre-adjudication** detention in a secure detention facility.

The opinion erroneously concludes that it is "only after a child has been adjudicated by a juvenile court as engaging in delinquent conduct for violating a court order and is held in contempt, may the child be confined if the court so orders at the disposition hearing." It is generally just the opposite that is true. Section 54.04(o) clearly states:

> A child adjudicated for contempt of a justice or municipal court order **may not, under any circumstances,** be placed in a **post-adjudication** secure correctional facility or committed to the Texas Youth Commission for that conduct (emphasis added).

Although a child could be confined in a non-secure post-adjudicative facility, it is clear from reading section 54.04(o) that confinement in a secure facility, as suggested by the opinion, is not a legal option for the juvenile court.

WHEREFORE, PREMISES CONSIDERED, it is hereby requested that Attorney General Opinion No. JC-0454 be modified to comport with the law as set forth in this brief.

Charles A. Rosenthal, Jr.
District Attorney
Harris County, Texas

Bill Hawkins
Assistant District Attorney
Harris County, Texas