

James L. Anderson Jr.
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Aransas County

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January 8, 2008

Honorable Greg Abbott
Attorney General of the State of Texas
Office of the Attorney General
PO Box 12548
Austin, TX 78711-2548

RQ-0669-GA

RECEIVED

FILE # ML-45506-08

JAN 11 2008

ID # 45506

Dear Attorney General Abbott,

OPINION COMMITTEE

The undersigned respectfully requests an Attorney General's opinion concerning whether or not the legislation creating the Aransas County Court at Law divested from the County Judge of Aransas County of all duties, privileges and responsibilities as a magistrate under the Code of Criminal Procedure of the State of Texas.

FACTS

The Aransas County Court is a constitutional County Court created by the Constitution of the State of Texas. In 2001 the Legislature of the State of Texas created the Aransas County Court at Law and removed all civil, probate, juvenile and criminal jurisdiction from the County Court of Aransas County and vested that jurisdiction in the Aransas County Court at Law. The pertinent sections concerning the creation of the County Court at Law are §§26.104, 25.0061 and 25.0062 of the Government Code.

The County judge (Judge of the County Court of Aransas County Texas) wishes to magistrate prisoners in the Aransas County Jail, read them their rights, set bonds and perform all other duties as a magistrate set out by the Code of Criminal Procedure.

QUESTION

Because the County Judge is enumerated in the Code of Criminal Procedure as a "Magistrate" did the enabling legislation creating the Aransas County Court at Law, vesting certain powers and jurisdiction in it, and divesting certain powers and jurisdiction from the Aransas County Court, remove the County Judge's magistrate rights and powers granted and mandated under the Code of Criminal Procedure, thereby preventing the County Judge of Aransas County from having the authority to read prisoners rights, set bonds, issue search warrants and perform other duties as set out by the Code of Criminal Procedure for magistrates?

Respectfully submitted,

James L. Anderson Jr.
County Attorney, Aransas County



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JAN 31 2008

OPINION COMMITTEE

James L. Anderson Jr.
County Attorney
Aransas County

301 North Live Oak Street
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January 28, 2008

Honorable Greg Abbott
Attorney General of the State of Texas
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML-45506-08
I.D. # 45529

Dear Attorney General Abbott,

The undersigned respectfully requests an Attorney General's opinion concerning whether or not the legislation creating the Aransas County Court at Law divested from the County Judge of Aransas County of all duties, privileges and responsibilities as a magistrate under the Code of Criminal Procedure of the State of Texas.

FACTS

The Aransas County Court is a constitutional County Court created by the Constitution of the State of Texas. In 2001 the Legislature of the State of Texas created the Aransas County Court at Law and removed all civil, probate, juvenile and criminal jurisdiction from the County Court of Aransas County and vested that jurisdiction in the Aransas County Court at Law.

The County Judge (Judge of the County Court of Aransas County Texas) wishes to magistrate prisoners in the Aransas County Jail, read them their rights, set bonds, issue search warrants, and perform all other duties as a magistrate as set out in and by the Code of Criminal Procedure.

THE LAW

The pertinent sections concerning the creation of the Aransas County Court at Law and removing certain jurisdiction from the Aransas County Court are §§26.104, 25.0061 and 25.0062 of the Government Code.

Although the Legislature may set out the duties and responsibilities statutorily for the County Court thereby imbuing the County Judge with the duties and responsibilities as specified by the

Legislature, it is the Code of Criminal Procedure that creates Magistrates (see §2.09 CCP) and sets out the duties of the Magistrates (see §2.10 CCP inter alia).

The undersigned has found no case law or statutory reference concerning the issues presented herein. The undersigned and Aransas County have David Brooks on retainer for purposes of assistance in matters such as these. The undersigned contacted David Brooks personally after being unable to find any case law, statutory reference or reference in David Brooks' treatise on Government and Mr. Brooks informed the undersigned that he was not aware of any case law or statutory authority whereby the County Judge is stripped of his "Magistrate" status simply by the creation of a County Court at Law which divested the County Court of its criminal jurisdiction but does not address the County Judge's position as a magistrate under section 2.09 CCP.

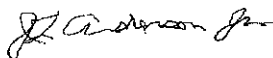
QUESTION

Since the County Judge is enumerated in the Code of Criminal Procedure as a "Magistrate", did the enabling legislation creating the Aransas County Court at Law and vesting certain powers and jurisdiction in it, and divesting certain powers and jurisdiction from the Aransas County court, remove the County Judge as a "Magistrate" and thereby prevent the County judge from exercising the rights, duties and obligations imposed on the County Judge as a "Magistrate" by the various articles and sections contained in the Code of Criminal Procedure?

It is the opinion of the undersigned that the legislation creating the Aransas County Court at Law did not strip the Aransas County Judge of his duties and obligations as a "Magistrate" under the Code of Criminal Procedure.

I would appreciate an opinion from you concerning this issue.

Respectfully submitted,



James L. Anderson Jr.