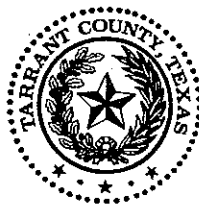


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OPINION COMMITTEE



TARRANT COUNTY

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FILE # ML-45899-08
I.D. # 45899

TIM CURRY
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JUSTICE CENTER
401 W. BELKNAP
FORT WORTH, TX 76196-0201

October 29, 2008

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

RQ-0760-GA

Re: Request for Attorney General's Opinion on the possible conflict between section 87.85(g)(3) of Title 37 of the Texas Administrative Code and article 62.352 of the Code of Criminal Procedure, which pertain to the registration of juvenile sex offenders.

To the Honorable Greg Abbott:

Pursuant to section 402.043 of the Texas Government Code, the Tarrant County Criminal District Attorney's Office hereby requests your opinion regarding the registration of certain juvenile sex offenders by the Texas Youth Commission (TYC) in cases where registration was originally deferred by the juvenile court under article 62.352 of the Texas Code of Criminal Procedure. Specifically, your opinion is sought on whether section 87.85(g)(3) of the Texas Administrative Code, which authorizes TYC to require the registration of juvenile offenders who are discharged from TYC without successfully completing treatment, is in conflict with article 62.352(c) of the Texas Code of Criminal Procedure, which grants the juvenile court continuing jurisdiction on this issue.

RELEVANT FACTS:

Whenever a juvenile sex offender is committed to the custody of TYC, the 323rd District Court in Tarrant County, Texas sitting as a Juvenile Court, will occasionally issue an order deferring a decision on sex offender registration pending the outcome of sex offender treatment.

These orders further provide that the Court retains the discretion to require registration at any time during treatment or upon the unsuccessful completion of treatment.

Once these offenders have gone through treatment, TYC will send a notice to the Court and to the Tarrant County District Attorney's Office stating that the offender has either 1) successfully completed treatment and will therefore not be required to register, or 2) has been unsuccessful in treatment and will be required to register. Thus, if TYC determines that the offender was unsuccessful in the completion of treatment it will, upon discharging him from TYC, require him to register as a sex offender without approval or further involvement of the court.

APPLICABLE LAW:

The Sex Offender Registration Program found in Chapter 62 of the Texas Code of Criminal Procedure requires sex offenders who have a "reportable conviction or adjudication" for an offense listed in article 62.001(5) to register as sex offenders. Chapter 62 defines "reportable conviction or adjudication" to include adjudications of delinquent conduct. Tex. Code Crim. Proc. art. 62.001(5). Hence, the act applies to juvenile as well as adult offenders. However, unlike adult offenders, juvenile offenders are not automatically required to register under Chapter 62. Instead, Chapter 62 authorizes the juvenile court, on motion of the offender, to conduct a hearing to determine whether the interests of the public require registration. Tex. Code Crim. Proc. art 62.351(a). After a hearing, the court has the authority to excuse registration altogether, or defer a decision on registration pending the outcome of sex offender treatment. Tex. Code Crim. Proc. art 62.352. Under article 62.352(c) if registration is deferred, "the court retains discretion and jurisdiction to require, or exempt the respondent from, registration under this chapter at any time during the treatment or on the successful or unsuccessful completion of treatment" Tex. Code Crim. Proc. art. 62.352(c). If the offender successfully completes treatment he is exempted from registration, without the necessity of further court action, unless the State files a motion in the juvenile court "and the court determines the interests of the public require registration." *Id.*

The registration issue becomes more complex if TYC determines that the offender failed to successfully complete treatment. Section 87.85 (g)(3) of Title 37 of the Texas Administrative Code provides that if the offender is discharged from TYC without successfully completing treatment "the PSW [primary service worker] shall register the youth as required in subsection (f) of this policy." Tex. Admin. Code § 87.85(g)(3). Subsection (f) provides for the "full registration" of offenders whose duty to register has not been excused or deferred. 37 Tex. Admin. Code § 87.85(f). Under this provision, TYC can effectively end the juvenile court's order deferring registration without further involvement by the juvenile court. This seems to be at odds with the continuing jurisdiction granted to the juvenile court by the legislature under

article 62.352(c). Additionally, section 87.85(g) limits TYC's options to full registration and no registration, whereas article 62.352 gives the juvenile court a third option: nonpublic registration. Tex. Code Crim. Proc. art. 62.352(b)(2). No appellate courts have yet addressed whether a conflict exists between article 62.352 and §87.85(g).

A potential remedy exists for juvenile offenders who were ordered by TYC to register and wish to challenge this in court. A juvenile offender who has already registered as a sex offender may seek an exemption from further registration or may seek to have his registration obligation changed to nonpublic registration by filing a motion under article 62.353 in the adjudicating juvenile court. Tex. Code Crim. Proc. art. 62.353(a). However, that provision may not allow a juvenile offender who has not yet registered to challenge TYC's determination that he must register since, by its terms, it only allows the filing of a motion by "a person who *has registered* (emphasis added)." *Id.* To date, no appellate courts have addressed this issue.

QUESTION PRESENTED:

Does TYC have the authority under § 87.85(g)(3) of the Texas Administrative Code to require an offender to register as a sex offender, notwithstanding that provision conflicts with the juvenile court's authority under article 62.352(b)(1) and (c) of the Texas Code of Criminal Procedure, and the juvenile court has opted to exercise its authority to defer a decision on registration?

Thank you for your assistance in this matter.

Respectfully Submitted,

TIM CURRY,
CRIMINAL DISTRICT ATTORNEY
TARRANT COUNTY, TEXAS