



**THE ATTORNEY GENERAL
OF TEXAS**

Gerald C. Mann
~~Deputy Attorney General~~
ATTORNEY GENERAL

AUSTIN, TEXAS

Hon. R. T. Burns
County Attorney
Walker County
Huntsville, Texas

Dear Sir:

Opinion No. O-1616

Re: Capias after indictment in felony case shall be issued by the Clerk and placed in the hands of the Sheriff for service.

This will acknowledge receipt of your letter of October 21, 1939, in which you submit for an opinion of this Department, the question of whether the sheriff or the constable has the right to execute a capias in a felony case after an indictment has been returned.

We deem a quotation of the pertinent parts of your letter important as forming the basis of this opinion. Your letter reads in part:

"I am writing you and asking for an interpretation of Articles 443 and 453 of the Code of Criminal Procedure. I have not been able to find any court decisions interpreting these two articles.

"The sheriff of Walker County and the constable of Precinct 1 have gotten into a controversy with reference to who has the authority under these two articles. The sheriff contends that, even though the constable makes an arrest of a minor felony and works the case up and carries it before the grand jury, and the grand jury indicts the defendant and returns a bill of indictment to the district court, that the constable has no authority or right to receive a capias from the district clerk and making an arrest of the defendant after indictment by the grand jury. The constable claims under Article 453 that he has the right to follow the case all the way through and do the work and receive all fees for handling same; while the sheriff claims under Article 443 that he alone, and himself only, has the right to make an arrest after indictment by the grand jury, or the arrest has to be made under his direction and from his office."

reads:

"A 'capias' is a writ issued by the court or clerk, and directed 'To any sheriff of the State of Texas,' commanding him to arrest a person accused of an offense and bring him before the court forthwith, or on a day or at a term stated in the writ."

Article 443 of the Code of Criminal Procedure reads:

"A capias shall be immediately issued by the district clerk upon each indictment for felony presented, and shall be delivered by the clerk or mailed to the sheriff of the county where the sheriff (defendant) resides or is to be found." (enclosure ours)

Article 453, Code of Criminal Procedure provides for the arrest of a defendant under a capias and reads:

"A capias may be executed by any constable or other peace officer. In felony cases, the defendant must be delivered forthwith to the sheriff of the county where the arrest is made, together with the writ under which he was taken."

Thus, it clearly appears under Articles 441 and 443, supra, that it is the duty of the clerk to direct a capias after indictment to the sheriff and to deliver the same to him.

Article 453, supra, clothes the constable with the authority to serve a capias, but in view of the duty imposed upon the clerk to deliver the same to the sheriff, the constable must necessarily derive his right of service from the sheriff. The sheriff may either serve the capias personally or have the same served under his direction.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ Lloyd Armstrong
Assistant

LA:AW:jrb

APPROVED NOV. 14, 1939
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE
BY BVB, Chairman