



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Stephen P. Hebert
County Attorney
DeWitt County
Cuero, Texas

Dear Sir:

Opinion No. O-1769
Re: Article 698, C.C.P., 1925, as amended -- authority of court to permit defendant to remain at large on his own recognizance.

This will acknowledge receipt of your letter of December 12, 1939, wherein you ask the opinion of this department upon the following question:

In a misdemeanor case, where the punishment assessed is by fine only, may the County Judge, in the exercise of sound discretion, permit the defendant, where judgment is deferred, to remain at large upon his own recognizance indefinitely?

Article 698, C.C.P., as amended (Article 698, Vernon's Code of Criminal Procedure, 1939 supplement), reads as follows:

"On each verdict of acquittal or conviction, the proper judgment shall be entered immediately. If acquitted the defendant shall be at once discharged from all further liability upon the charge for which he was tried; provided that, in misdemeanor cases where there is returned a verdict, or a plea of guilty is entered and the punishment assessed is by fine only, the Court may, on written request of the defendant and for good cause shown, defer judgment until some other day fixed by order of the Court; but in no event shall the judgment be deferred for a longer period of time than six (6) months. On expiration of the time fixed by the order of the Court, the Court or Judge thereof

shall enter judgment on the verdict or plea and the same shall be executed as provided by Chapter 4, Title 9, of the Code of Criminal Procedure of the State of Texas. Provided further, that the Court or Judge thereof, in the exercise of sound discretion may permit the defendant where judgment is deferred, to remain at large on his own recognizance, or may require him to enter into bond in a sum at least double the amount of the assessed fine and costs, conditioned that the defendant and sureties, jointly and severally, will pay such fine and costs unless the defendant personally appears on the day set in the order and discharges the judgment in the manner provided by Chapter 4, Title 9 of the Code of Criminal Procedure of the State of Texas; and for the enforcement of any judgment entered, all writs, processes and remedies of the Code of Criminal Procedure are made applicable so far as necessary to carry out the provisions of this Article."

The statute clearly provides that the judgment shall not be deferred for a longer period of time than six (6) months, and that in every instance where the court exercises his discretion to defer the judgment, his order so doing must fix the date to which the judgment is deferred, and that day must not be more than six months from the date of the reception of the verdict or plea of guilty. It is only in the instance that the judgment has been thus deferred that the court, in the exercise of a sound discretion, may permit the defendant to remain at large on his own recognizance.

The authority of the court to permit the defendant to remain at large on his own recognizance where the judgment has been deferred is necessarily limited by the preceding provisions of this statute prescribing the period of time for which the judgment may be deferred. The authority of the court is to permit the defendant, where judgment is deferred, to remain at large on his own recognizance during the period of deferment. Any attempt on the part of the court, by order, to defer judgment indefinitely, or beyond the six months period, or to permit the defendant to remain at large on his own recognizance indefinitely, or beyond the six months period, would not only constitute a violation

Hon. Stephen P. Hebert, Page 3

of the provisions of Article 698, but would constitute an attempted exercise of the pardoning power, a power which is vested by the Constitution of the State of Texas exclusively in the Governor of this State, subject, of course, to the affirmative recommendation of the Board of Pardons & Paroles.

Trusting that the foregoing answers your question,
we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

R. W. Fairchild

R. W. Fairchild
Assistant

RWF:pbp

APPROVED DEC 23, 1939

Charles Mann

ATTORNEY GENERAL OF TEXAS

