

C O P Y

Honorable C. C. Murdock  
County Attorney  
Kenard County  
Kenard, Texas

Dear Sir:

Opinion No. 0-3090

Re: Authority of County Court  
to accept pleas of guilty and  
impose sentence in vacation.

This will be in reference to your letter of January 24, 1941, requesting the opinion of this Department as to the authority of the County Court to accept pleas of guilty and impose sentence in vacation.

As stated in 11 Tex. Jur., p. 816:

"The general rule is that all judicial business must be transacted by a court in term time and that only such business can be disposed of in vacation as is expressly authorized by the constitution and statutes under which the court exists, and that a judge after adjournment may not, without express authority, take any action or render any order whatever."

Article 518 of the Code of Criminal Procedure provides:

"A plea of guilty in a misdemeanor case may be made either by the defendant or his counsel in open court. In such case, the defendant or his counsel may waive a jury, and the punishment may be assessed by the court, either upon or without evidence, at the discretion of the court."

In *Ex parte Cole*, 51 Tex. Crim. Rep. 166, 101 S.W. 249, the question was as to the validity of a statute specifically allowing the County Court to hold special terms in which to accept pleas of guilty. The Court struck down the statute as unconstitutional under Sections 17 and 29 of Article

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8 of the Texas Constitution and held that pleas of guilty may be accepted by the Court only during a regular term. See also Ex parte Collins, 79 Tex. Crim. Rep. 436, 185 S. W. 880; and Kirk vs. State, 60 Tex. Crim. Rep. 172, 151 S. W. 414.

In Ex parte Bills (Ct. of Cr. App., 1937) 133 Tex. Crim. Rep. 388, 111 S. W. (2d) 369, and Ex parte Jones (Ct. of Crim App., 1937) 133 Tex. Crim. Rep. 402, the Court of Criminal Appeals held invalid judgments of conviction in the County Court for misdemeanors and in each instance said:

"Suffice it to say that it appears from the record herein that appellant's convictions occurred on dates when the Court was in vacation. It follows that the judgments of conviction are void."

Consequently, it is the opinion of this Department and you are advised that a plea of guilty to a misdemeanor charge should be made in open court and the County Court is not authorized to accept pleas of guilty and render judgments of conviction in vacation.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By S.  
James D. Smullen  
Assistant

JDS:JS

Approved Feb. 7, 1941

By S.  
GERALD C MANN  
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE

BY S.  
EWB

OK  
WRK