



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

0-5-046  
GERALD C. MANN  
ATTORNEY GENERAL

Honorable Ben F. Thorpe  
County Attorney  
Scurry County  
Snyder, Texas

Dear Sir:

Opinion No. 0-5046

Re: Can a judge, at his discretion,  
permit two separate sentences  
in a misdemeanor case to run  
concurrent?

Your letter of recent date requesting our opinion  
has been carefully considered. We quote the following from  
your letter:

"Where a defendant charged with a misdemeanor  
and either pleads 'guilty' or is found 'guilty' in  
two separate and distinct cases, and said defendant  
is committed to satisfy judgment in both cases, can  
the judge, at his discretion permit said sentences  
in a misdemeanor to run concurrent.

"Under Article 785 CCP, it provides how fines  
and costs shall be discharged, but I do not find  
any law where sentences, or fines, in misdemeanor  
cases can be made to run concurrent where same is  
satisfied by confinement in the County Jail. Your  
opinion on this point will be appreciated."

Reference is made to Article 774 of the Code of  
Criminal Procedure of Texas, reading as follows:

"When the same defendant has been convicted  
in two or more cases, and the punishment assessed  
in each case is confinement in the penitentiary  
or the jail for a term of imprisonment, judgment  
and sentence shall be pronounced in each case in  
the same manner as if there had been but one con-  
viction, except that in the discretion of the

court, the judgment in the second and subsequent convictions may either be that the punishment shall begin when the judgment and sentence in the preceding conviction has ceased to operate, or that the punishment shall run concurrently with the other case or cases, and sentence and execution shall be accordingly. (Acts 1883, p. 8; Acts 1919, p. 25.)"

The above article has been held to apply to misdemeanors as well as to felonies. Ex parte Davis, 71 Tex. Cr. R. 538, 160 S. W. 459; Ex parte Banks, 41 Tex. Cr. R. 201, 53 S. W. 688; 12 Tex. Jur. 821, Sec. 419, "Criminal Law".

However, in the Banks case, supra, it is pointed out that the statute refers only to cases in which imprisonment is a part of the punishment; it has no reference to fines. Fines are independent of each other, and the payment of one is not the satisfaction of the other. For the latest expression of the Court of Criminal Appeals, see Ex parte Williams, 133 Tex. Cr. R. 116, 109 S. W. (2) 171.

As you have stated your question, it is answered that where a defendant is convicted of two or more misdemeanors wherein the punishment is by fine only they cannot be satisfied concurrently. If the punishments as fixed in the sentences are by imprisonment in jail, the court's order, judgment and sentence must affirmatively show the court's intention to make the punishments cumulative; otherwise they will be concurrent. Ex parte Davis, supra. But if in one case the defendant is merely fined while in another his punishment is imprisonment, the satisfaction may not be concurrently accomplished. See Ex parte Williams, supra.

Trusting that the above fully answers your question,  
we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Benjamin Woodall*  
Benjamin Woodall  
Assistant

1945  
*Benjamin Woodall*

BW:mp

