OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

O-6149

Honorable R. H. Jones
County Attorney
Polk County
Livingston, Texas

Dear Sir:

Opinion No. O-6149
Re: May a juvenile, who has a definite known residence and living parents, be tried in another county merely because he had carried stolen property through the county and was apprehended in still another county?

We are in receipt of your letter of recent date in which you propound the question as stated above.

Your question involves the applicability of two distinct statutes to cases of juvenile delinquency. One is a civil statute (Acts 1943, 48th Legislature, Chapter 204, page 313) now carried in Vernon's Annotated Civil Statutes of Texas as Article 2338-1. The other, Article 197 of the Code of Criminal Procedure, establishes the venue in the trial of criminal cases where the charge against the accused is for theft.

Venue, under the statute dealing with delinquent children, is specified by Section 7-A of the Act (Section 7-A, Article 2338-1, V.A.C.S., supra):

> "The petition referred to under Section 7 of this Act may be filed in the Juvenile Court of the county of residence of said child or of the county wherein the acts constituting said child a delinquent child were committed." (Emphasis ours)

Article 197, C.C.P., supra, reads as follows:

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"Where property is stolen in one county and carried off by the offender to another, he may be prosecuted either in the county where he took the property or in any other county through or into which he may have carried it." (Emphasis ours)

Section 3 of the juvenile statute provides that:

". . . The term 'delinquent child' means any female person over the age of ten (10) years and under the age of eighteen (18) years and any male person over the age of ten (10) years and under the age of seventeen (17) years:

"(a) who violates any penal law of this state of the grade of felony;

"(b) or who violates any penal law of this state of the grade of misdemeanor where the punishment prescribed for such offense may be by confinement in jail;

"(c) or who habitually violates any penal law of this state of the grade of misdemeanor where the punishment prescribed for such offense is by pecuniary fine only;

". . . ."

The offense of theft is defined by Article 1410 of the Penal Code of this State, and the punishment is prescribed by Articles 1421 and 1422. If the value of the property stolen is fifty dollars ($50.00) or over, the offense is a felony and the juvenile proceeding would be based upon Section 3 (a) of Article 2338-1, supra; if under fifty dollars ($50.00) and over five dollars ($5.00), it would come under Section 3 (b); if five dollars ($5.00) or under, then the juvenile proceeding would be in accordance with Section 3 (c).

In prosecutions for theft, the offense is considered complete when the actual taking has been accomplished. The carrying of property into a county other than the one in which it was taken is not a new and distinct theft. Harrington vs. State, 31 Tex. Cr. R. 577, 21 S. W. 356. Article 197,

C.C.P., supra, is a venue statute only. The court of the county first indicting one for the theft acquires jurisdiction and an accused, asserting his right to be tried in that county, deprives the courts of other counties of jurisdiction. Pearce vs. State, 50 Tex. Cr. R. 507, 98 S. W. 861.

But it has been repeatedly held that proceedings under Article 2338-1, Vernon's Annotated Civil Statutes, are civil in nature. It has been said:

> "The delinquency proceeding of your bill (referring to the Act now under consideration) is not in any sense a criminal prosecution -- it is a civil procedure. . . ." (Opinion No. O-5066, Attorney General, March 3, 1943; Opinion No. O-5786, Ibid, January 28, 1944; Opinion No. O-5479, Ibid, August 12, 1943).

Any appeal from the action of the trial court lies, not to the Court of Criminal Appeals, but to the proper Court of Civil Appeals - thence to the Supreme Court. (Section 21, Article 2338-1, supra.)

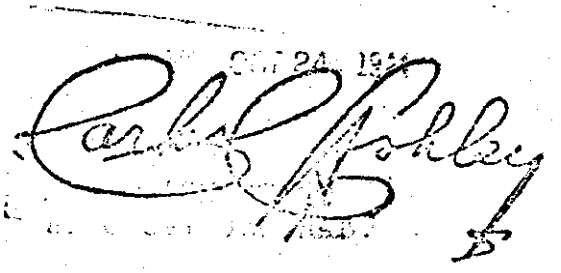
We have come to the conclusion that there is no question but that Section 7-A of Article 2338-1, supra, gives <u>exclusive</u> venue to either (1) the county of actual residence of the child, or (2) the county wherein the acts constituting said child a delinquent child were committed; that the venue statute in theft cases generally (Article 197, C.C.P., supra) is limited to <u>criminal prosecutions</u>; that a juvenile delinquency case is a <u>civil proceeding</u> and not a <u>criminal prosecution</u>.

We also are of the opinion that a cause of action arises when the theft is committed and since there is but one act on the part of the child bringing the case within the delinquency proceedings and that act occurs when the property is taken, by virtue of Section 7-A, supra, the case of the State seeking to intervene in behalf of its erring ward is properly brought only (1) in the county of the juvenile's actual residence, or (2) in the county where the child originally takes the property with the intent to deprive the true owner of the value thereof.

We do not imply that even in a juvenile delinquency case, the venue question might not be waived. From reading your letter we conclude such waiver to have been probable in the case mentioned by you.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Benjamin Woodall
Benjamin Woodall
Assistant

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