



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

June 12, 1947

Hon. Robert L. Kirk  
County Attorney  
Lamb County  
Littlefield, Texas

Opinion No. V-251

Re: Term time of the Dis-  
trict Court, 64th Judi-  
cial District, in the  
light of recent legis-  
lation affecting the  
district.

Dear Sir:

We refer to your letter of May 24, 1947, in which you requested an opinion of this Department and which reads in part as follows:

"The District Court of Lamb County has been and is in the 64th Judicial District. The last term began on the 5th Monday after the 1st Monday in January, 1947, and was supposed to continue in session until the Saturday preceding the 1st Monday in August. A Grand Jury was duly impanelled and attended to the business then on hand. It was recessed until such time during the term as it might again be needed. During this present session of the Legislature, a bill was introduced, passed and became effective on May 2, 1947 which added Farmer County to the 64th Judicial District. This bill slightly changed the terms of the various courts in the District. It did not change the beginning date of the next term of the District Court in Lamb County. This bill made no provision for the continuation of the terms of court then in session. It is contemplated, and there exists a necessity for calling the Grand Jury in Lamb County back into session before the next term of Court.

"Does the February term of Court continue in Lamb County until the Saturday before the 1st Monday in August, 1947?"

"If the Grand Jurors who were impanelled in February were called back into session at this time, would an indictment presented by them be valid?"

Upon checking the Bill in the Secretary of State's office as passed by the Legislature, we find that it further provides that the terms of Court for Lamb County shall begin on the first Monday in February and the first Monday in August; and that each term of Court in each of such counties of the 64th District may continue until the Saturday immediately preceding the Monday for convening the next regular term therein.

The pertinent portion of Article V, Section 7, of the State Constitution provides:

"The State shall be divided into as many judicial districts as may now or hereafter be provided by law, which may be increased or diminished by law . . . He shall hold the regular terms of his court at the county seat of each county in his district at least twice in each year in such manner as may be prescribed by law."

In Keaton v. State, 57 S.W. 1125, the appellant, under facts similar to those before us here, contended that the Court at the time of his conviction, was not lawfully in session, because the Legislature had, since the convening of the Court, repealed the law fixing the time for holding terms of the District Court in and for Coleman County by passing an amendment fixing the times for holding said Court in said county, which terminated the February term, 1899, of said Court and this Court could not again lawfully be in session before the first Monday in September, 1899. We quote from the case as follows:

". . . The regular time for the convening of the term of court at which appellant was tried was the first Monday in February, 1899, to continue in session four weeks. The Court was organized on said day. While the court was in session and being held under the then-existing law, the legislature passed an act, with the emergency clause attached, merely adding to the term of court for Coleman

county one week. The amendment provided for the term to begin the first Monday in February and to remain in session five weeks. It will be seen from this that the beginning of the term was not changed, and that the clear intendment of the legislature was simply to give one additional week to Coleman county for the district court, and the amendment was not intended to have a retrospective effect, so as to repeal the then-existing term of the district court of Coleman county. Article 5, § 7, of the constitution provides: 'The state shall be divided into as many judicial districts as may now or hereafter be provided by law, which may be increased or diminished by law. He (the district judge) shall hold the regular term of his court at the county seat of each county in his district at least twice each year, in such manner as may be prescribed by law.' The bare statement of this constitutional provision would certainly preclude the construction of the amendment by the legislature as contended for by appellant; his contention being that the amendment repealed the previous law whereby the session of the district court of Coleman county was authorized to begin on the first Monday in February. If this is a repeal of the old law, then Coleman county would be deprived of one term of the district court, which would be in the face of the constitutional provision quoted . . . ."

In the case of *Ex parte Murphy* reported in 11 S. W. 487, the defendant insisted that his conviction was illegal and void because rendered at a time when a legal term of the Court could not be had. We quote from the same as follows:

" . . . The facts are that the said term was held at the time fixed by the act of 1885, (Laws 1885, p. 8,) that is,

commencing on the fifth after the first Monday in March. On April 2, 1889, six days prior to the convening of said term, on April 8th, an act was passed by the legislature changing the time of holding said court in said county to the fourth Monday in March. This act contains an emergency clause, and declares that it shall take effect from its passage. Applicant contends that after the passage of said act of April 2, 1889, a legal term of the district court for Karnes county could not be held, except at the times prescribed by said act.

"We are of opinion that the term of the court at which the conviction was had was a legal term. If it were held otherwise, the effect would be to deprive Karnes county of one term of said court for the present year, when the constitution declares that two terms of the district court shall be held each year in each county. Const. Art. 5, § 7. In construing an act of the legislature, it is the duty of the court to so interpret the legislative intent as to harmonize the provisions of the act with the constitution, if this can be done reasonably. It must be presumed that the legislature did not intend to disregard the above-cited provision of the constitution by depriving Karnes or any other county of the district of the constitutional right to have two terms of the district court in each year. If such was the intent, the act would be void, and the courts in that district would have to continue to be held at the times fixed by the old law. Notwithstanding the emergency clause in said act of April 2d, we feel justified in holding that it was not the legislative intent that said act should immediately take effect, but that it should become operative only at a time when it would not deprive any county in the district of two terms of court. . ."

In view of the foregoing, you are respect-

fully advised that it is the opinion of this Department that the February term of Court continues in Lamb County until the Saturday before the first Monday in August, 1947. (See also Bowden, et al, v. Crawford, 125 S.W.5)

This being true, it naturally follows that the second question is answered in the affirmative. That is, if the Grand Jurors who were impanelled in February were called back into session at this time, an indictment presented by them would be valid.

SUMMARY

The present term of the District Court of Lamb County remains unchanged for the remainder of the term, even though the Legislature passed a Bill effective May 2, 1947, changing the terms of certain counties of the 64th Judicial District, of which District Lamb County belongs, and although the Bill made no provision for the continuation of the terms of Court then in session; otherwise the county would be deprived of two full terms of Court each year in violation of Article V, Sec. 7, of the State Constitution. Keaton v. State, 57 S.W. 1125; Ex parte Murphy, 11 S.W. 487. If the Grand Jurors who were impanelled in the February term were called back into session at this time, an indictment presented by them would be valid.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Bruce Allen*  
Bruce Allen  
Assistant

BA:WB

APPROVED JUNE 12, 1947

*Price Daniel*  
ATTORNEY GENERAL OF TEXAS