



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

March 6, 1963

Honorable Henry C. Grover
Chairman, Counties Committee
House of Representatives
Austin, Texas

Opinion No. C-28

Re: Constitutionality of
House Bill 450 of the
58th Legislature.

Dear Mr. Grover:

Your request for an opinion reads as follows:

"As Chairman for the Counties Committee, House Bill 450 by Cavness, Cain, Ritter and Foreman has come before me during this session.

"As I understand it, this is a bill to enlarge the jurisdiction of the present County Court at Law and create concurrent jurisdiction with the County Court of Travis County in matters of eminent domain and probate.

"The question was raised before this committee as to whether there might be some constitutional limitation in giving County Courts at Law these additional powers as outlined in this bill.

"Will you please rule on this question so that we may act on this bill with an understanding of its constitutionality."

The title of House Bill 450, attached with your request, reads as follows:

"AN ACT amending Chapter 136, Acts of the 47th Legislature, Regular Session, as amended by Chapter 166, Acts of the 51st Legislature, Regular Session, by creating a County Court at Law No. 1 of

Travis County, Texas, in lieu of the present County Court at Law of Travis County, Texas, providing for the appointment, election, removal and salary of the judge thereof, and making other provisions relative thereto, including provisions that such County Court at Law No. 1 shall have the same jurisdiction as the present County Court at Law of Travis County, Texas, and in addition concurrent jurisdiction with the County Court of Travis County and any other numbered County Court at Law of Travis County, now or hereafter created, as to all matters of eminent domain and as to all probate matters as may be assigned to it by the County Judge of Travis County, conforming the jurisdiction of the County Court of Travis County thereto, providing that the County Court of Travis County shall have and retain concurrent jurisdiction in all matters of probate and eminent domain; but not as to other matters civil or criminal; providing a severability clause; and declaring an emergency."

An examination of the body of the Act reveals that it is in conformity with the title above quoted. Since House Bill 450 contains but one subject which is expressed in its title and the body of the bill is in conformity with the title, it is our opinion that the provisions of Section 35 of Article III of the Constitution of Texas have been complied with.

Section 1 of Article V of the Constitution of Texas provides as follows:

"The judicial power of this State shall be vested in one Supreme Court, in Courts of Civil Appeals, in a Court of Criminal Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

"The Criminal District Court of Galveston and Harris Counties shall continue with the district jurisdiction and organization now existing by law until otherwise provided by law.

"The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto."

Since House Bill 450 is an Act "creating a County Court at Law No. 1 of Travis County, Texas, in lieu of the present County Court at Law of Travis County, Texas" and provides for its jurisdiction and organization, it is an exercise of constitutional power granted the Legislature pursuant to Section 1 of Article V of the Constitution of Texas, above quoted. Sterrett v. Morgan, 294 S.W.2d 201 (Tex.Civ.App. 1956).

Section 15 of Article V of the Constitution of Texas provides that there shall be established in each county in this State a county court, and Section 16 of Article V of the Constitution prescribes the jurisdiction of the county court.

Section 22 of Article V of the Constitution of Texas reads as follows:

"The Legislature shall have power by local or general law, to increase, diminish or change the civil and criminal jurisdiction of County Courts; and in cases of any such change of jurisdiction, the Legislature shall also conform the jurisdiction of the other courts to such change."

Section 4 of House Bill 450 of the 58th Legislature provides:

"The County Judge of Travis County, in his discretion, may from time to time, by order or orders entered upon the minutes of the County Court of Travis County transfer to the County Court at Law No. 1 of Travis County or to any other numbered County Court at Law of Travis County, now or hereafter created, any such probate matter or proceeding then pending in the County Court of Travis County and all processes extant at the time of such transfer shall be returned to and filed in the County Court at Law No. 1 of Travis County or any other numbered County Court at

Law of Travis County, having jurisdiction thereof, now or hereafter created, and shall be as valid and binding as though originally issued out of said County Court at Law No. 1 of Travis County or any other numbered County Court at Law of Travis County, now or hereafter created. The County Court of Travis County shall have and retain concurrently with the County Court at Law No. 1 of Travis County and any other numbered County Court at Law of Travis County, now or hereafter created, the general jurisdiction of a Probate Court and the jurisdiction now conferred or which may be conferred by law over probate matters."

Since county courts have jurisdiction over probate proceedings, the question arises as to whether Section 4 of House Bill 450, quoted above, diminishes the county court's constitutional jurisdiction, in violation of the Constitution. It is our opinion that it does not. This precise question was settled in State v. McClelland, 148 Tex. 372, 224 S.W.2d 706 (1949), wherein the Supreme Court of Texas held a statute creating a Probate Court of Harris County and granting it jurisdiction concurrent with that of the County Court over probate of wills, appointment of guardians and other matters, to be constitutional. Section 4 likewise provides that the County Court at Law No. 1 of Travis County shall have concurrent jurisdiction with the County Court of Travis County, and is, therefore, in our opinion, constitutional.

Since House Bill 450 of the 58th Legislature is an Act providing for the creation and organization of a county court at law and conforms its jurisdiction to other courts in Travis County, you are advised that House Bill 450 is constitutional. Sterrett v. Morgan, 294 S.W.2d 201 (Tex. Civ.App. 1956); State v. McClelland, 148 Tex. 372, 224 S.W.2d 706 (1949); Jordan v. Crudgington, 149 Tex. 237, 231 S.W.2d 641 (1950); Lord v. Clayton, Tex. , 352 S.W.2d 718 (1961); Ex parte Towles, 48 Tex. 413 (1877); Harris County v. Stewart, 91 Tex. 133, 41 S.W. 650 (1897).

SUMMARY

House Bill 450 of the 58th Legislature, creating a County Court at Law No. 1 of

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Travis County, Texas, in lieu of the
present County Court at Law of Travis
County, Texas, is constitutional.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By 
John Reeves
Assistant

JR:ms

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

J. C. Davis
James N. Stofer
George Gray

APPROVED FOR THE ATTORNEY GENERAL
By: Stanton Stone