



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WAGGONER CARR  
ATTORNEY GENERAL**

February 24, 1965

Hon. Ellis A. Oualline, Jr. Opinion No. C-392  
District Attorney  
Montgomery County  
Conroe, Texas

Re: Whether criminal cases are properly transferrable between the Ninth and Second Ninth District Courts.

Dear Mr. Oualline:

By your letter of January 22, 1965, you requested an opinion of this office regarding the above matter. Article 64, Vernon's Code of Criminal Procedure, provides:

"When two or more courts have concurrent jurisdiction of any criminal offense, the court in which an indictment or a complaint shall first be filed shall retain jurisdiction of such offense to the exclusion of all other courts."

This statute is intended to prevent any confusion or contention which might arise between courts having concurrent jurisdictions of the person and subject matter of the prosecution. Article 64 is a general statute. Cowley v. State, 163 S.W.2d 193 (Tex.Crim. 1942) A special act will prevail over a general law and will be treated as an exception to the general law. Perez v. Perez, 59 Tex. 322 (1883) A reading of Article 199, Vernon's Civil Statutes shows that the Ninth and Second Ninth Judicial District Courts are set up on a basis of concurrent jurisdiction. It is therefore our opinion that in the absence of special legislation expressly providing for such transfer, criminal cases may not be transferred between the two courts. Johnson v. State, 148 S.W. 300 (Tex.Crim. 1912); In re Drane, 191 S.W. 1156 (1917); Wrenn v. State, 200 S.W. 844 (1918); Bragg v. State, 6 S.W.2d 365 (1928); Ringer v. State, 121 S.W.2d 364 (1938).

As noted above, such transfer may be authorized by statute; Moore v. State, 35 S.W. 668 (Tex.Crim. 1896); Cummings v. State, 35 S.W. 979 (Tex.Crim. 1896); Littleton v. State, 239 S.W. 202 (Tex.Crim. 1922); Ehrlich v. State,

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281 S.W. 548 (Tex.Crim. 1926). However, there is no provision in Article 199, above, allowing transfer between the two courts.

SUMMARY

Criminal cases may not be transferred between the Ninth and the Second Ninth Judicial District Courts.

Yours very truly,

WAGGONER CARR  
Attorney General of Texas

By:   
CHARLES B. SWANNER  
Assistant Attorney General

CBS/lh

APPROVED:  
OPINION COMMITTEE  
W. V. Geppert, Chairman  
Sam Kelley  
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V. F. Taylor  
Bob Flowers

APPROVED FOR THE ATTORNEY GENERAL  
BY: Stanton Stone