



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

August 29, 1974

The Honorable Maurice S. Pipkin
Executive Director, State Judicial
Qualifications Commission
P. O. Box 12265, Capitol Station
Austin, Texas 78711

Opinion No. H- 386

Re: Whether Justice of the
Peace may delegate responsi-
bility to employees of this
office.

Dear Mr. Pipkin:

Your letter requesting our opinion states that the State Judicial Qualifications Commission has received a number of complaints concerning the practice of justices of the peace delegating authority to clerks, secretaries and spouses to accept pleas of guilty, to levy fines on guilty pleas, to set bonds when a defendant pleads not guilty, etc. You have asked our opinion as to the propriety of this practice which you have found to exist in some instances.

The office of justice of the peace is created by Article 5, §18, Texas Constitution. Article 5, §19 of the Constitution defines the limits of their jurisdiction.

Sec. 19. Justices of the peace shall have jurisdiction in criminal matters of all cases where the penalty or fine to be imposed by law may not be more than for two hundred dollars, and in civil matters of all cases where the amount in controversy is two hundred dollars or less, exclusive of interest, of which exclusive original jurisdiction is not given to the District or County Courts; and such other jurisdiction, criminal and civil, as may be provided by law, under such

regulations as may be prescribed by law; and appeals to the County Courts shall be allowed in all cases decided in Justices' Courts where the judgment is for more than twenty dollars exclusive of costs; and in all criminal cases under such regulations as may be prescribed by law. And the justices of the peace shall be ex officio notaries public. And they shall hold their courts at such times and places as may be provided by law.

Pursuant to the constitutional authorization, the Legislature has provided by law for jurisdiction in numerous other situations. See, for example, Articles 2385 and 2386, V. T. C. S.; Articles 4.11, 16.15, 49.01, 50.01, V. T. C. C. P.

Furthermore, the Legislature has provided for the performance of the duties of a justice of the peace when he is absent or unable or unwilling to perform the duties of his office himself, Article 2377, V. T. C. S., or when he is unable to perform them because of sickness or injury or other disqualification. Article 2399, V. T. C. S.

No authority exists for a justice to perform his duties or exercise his powers by delegation to a secretary, clerk or spouse. The maxim, delegatas non potest delegare (the person to whom an office or duty is delegated cannot lawfully devolve the duty on another unless expressly authorized to do so) is applicable to this situation. Newsom v. Adams, 451 S. W. 2d 948 (Tex. Civ. App., Beaumont 1970, no writ); Moody v. Texas Water Commission, 373 S. W. 2d 793 (Tex. Civ. App., Austin, 1963, writ ref'd., n. r. e.); 47 TEX. JUR. 2d Public Officers, §114, p. 149, et seq.

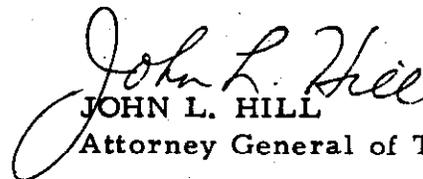
Those powers and duties of a public officer which are judicial in nature, as distinguished from those which are ministerial, cannot be delegated to another. Padgett v. Young County, 204 S. W. 1046 (Tex. Civ. App., Ft. Worth 1918, writ dism'd); Navarro County v. Tullios, 237 S. W. 982 (Tex. Civ. App., Dallas 1922, err. ref'd.).

In our opinion the acts of a justice of the peace in accepting pleas of guilty, levying fines on such pleas and setting bonds on pleas of not guilty are among the judicial functions which a justice of the peace may not delegate to his clerk, his secretary, his spouse, or anyone else.

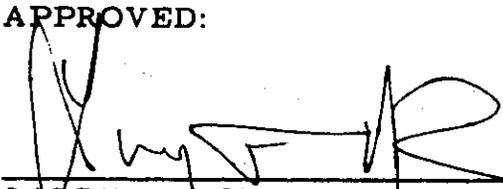
SUMMARY

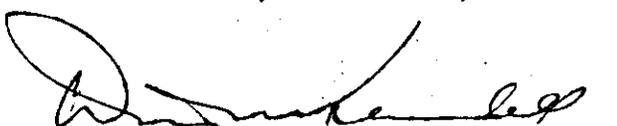
A justice of the peace may not delegate to any other person the exercise of judicial powers and duties devolved upon him by the Constitution or statutes of the state.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee

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