



**THE ATTORNEY GENERAL
OF TEXAS**

November 7, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Weldon C. Wells
McLennan County Auditor
130 County Records Building
Waco, Texas 76701-1361

LO-89-91

Dear Mr. Wells:

You ask whether a justice of the peace has authority to deputize someone other than a sheriff or constable to serve civil process when no emergency exists.¹ You ask the following questions on this and related matters:

1. May a Justice of the Peace depute a person other than a sheriff or constable to serve civil papers in cases where no emergency exists[?]

2. If a sheriff or constable is available to serve such civil papers, under what conditions might the circumstances be deemed to constitute an emergency[?]

3. What recourse is available to a sheriff or constable who is deprived of the opportunity to serve civil papers in cases when another person is deputed to serve such papers without the existence of an emergency[?]

1. You advise that in response to your request the district attorney has furnished you with a written opinion answering your questions. While you note that you believe that opinion to be sound, you state that other affected officials have questioned the correctness of the district attorney's opinion.

Rule 523 of the Texas Rules of Civil Procedure addresses the matter of rules governing practice in the justice court. Rule 523 provides:

All rules governing the district and county courts shall also govern the justice courts, insofar as they can be applied, except where otherwise specifically provided by law or these rules. (Emphasis added.)

While rule 103 of the Texas Rules of Civil Procedure, applicable to district and county courts, provides for service by any sheriff or constable or by "any person authorized by law or by written order of the court," rule 536 of the Texas Rules of Civil Procedure specifically provides for the service of process in the justice court. Rule 536 provides:

The justice, in case of an emergency, may depute any person of good character to serve any process; and the person so deputed shall for such purpose have all the authority of a sheriff or constable, but in every such case the justice shall indorse on the process a statement in writing, signed by him officially, to the effect that he has deputed such person to serve such process. Such person shall also take and subscribe an affidavit, to be indorsed on or attached to the process, to the effect that he will to the best of his ability execute the same according to law and these rules. (Emphasis added.)

Under rule 536 an emergency must exist before a justice may deputize a person other than a sheriff or constable to serve process. Also, rule 536 contains a requirement, not imposed by rule 103, that the person deputized take and subscribe an affidavit to discharge this responsibility. We think those requirements make clear that the more liberal provisions of rule 536 do not apply to a justice court.

You also ask what circumstances may constitute an emergency under rule 536. Whether an emergency exists is a fact question that must be resolved by a justice of the peace on a case-by-case basis.

With your third question you ask for general legal guidance. Attorney General Opinions are addressed to



**THE ATTORNEY GENERAL
OF TEXAS**

November 27, 1989

**JIM MATTON
ATTORNEY GENERAL**

Mr. Weldon C. Wells
McLennan County Auditor
130 County Records Building
Waco, Texas 76701-1361

LO-89-91

Dear Mr. Wells:

It has been brought to our attention that there is an error in the last sentence on the next to last full paragraph on page 2 of LO-89-91 issued November 7, 1989. The sentence in question states:

We think those requirements make clear that the more liberal provisions of rule 536 do not apply to a justice court.

"Rule 536" should be replaced with "rule 103." The sentence should read:

We think those requirements make clear that the more liberal provisions of rule 103 do not apply to a justice court.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Tom G. Davis".

Tom G. Davis
Assistant Attorney General
Opinion Committee

TGD/er

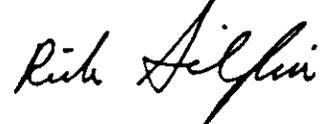
APPROVED: Rick Gilpin, Chairman
Opinion Committee

Sarah Woelk, Chief
Letter Opinion Section

Ref.: ID-7816
RQ-1837

specific legal questions. See Attorney General Opinion JM-1098 (1989). Therefore, we do not address your third question.

Very truly yours,



Rick Gilpin, Chairman
Opinion Committee



Sarah Woelk, Chief
Letter Opinion Section

Prepared by Tom G. Davis
Approved: Opinion Committee

RG/SW/TGD/er

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