



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 29, 1997

The Honorable David H. Aken, Jr.  
San Patricio County Attorney  
Courthouse, Room 102  
Sinton, Texas 78387

Letter Opinion No. 97-097

Re: Whether a person charged with a petty criminal  
offense has a right to trial by jury (ID# 39428)

Dear Mr. Aken:

You have requested our opinion as to whether a defendant charged with a petty criminal offense in justice court is entitled to a trial by jury. The question has arisen because of the recent decision of the United States Supreme Court in *Lewis v. United States*, 116 S.W.2d 2163 (U.S. 1996), which held that the right to a jury trial guaranteed by the sixth amendment to the United States Constitution "does not extend to petty offenses." The court defined a "petty offense" as one carrying a maximum penalty of six months imprisonment.

In *LeCroy v. Hanlon*, 713 S.W.2d 335 (Tex. 1986), the Texas Supreme Court declared:

While state constitutions cannot subtract from the rights guaranteed by the United States Constitution, state constitutions can and often do provide additional rights for their citizens. . . . The federal constitution sets the floor for individual rights; state constitutions establish the ceiling.

*Id.* at 338. *Accord, Heitman v. State*, 815 S.W.2d. 681, 690 (Tex. Crim. App. 1991). The Texas Constitution provides, in article I, section 10: "In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury." As the Texas Court of Criminal Appeals said in *Freeman v. State*, 148 Tex. Crim. 265, 186 S.W.2d 683 (1945):

The right of trial by jury is one of the sacred rights which our courts should accord every person charged with crime, independent of his guilt or innocence. Our Constitution guarantees to every person charged with crime a fair and impartial trial, with the right to submit the matter of punishment to a jury, even when he pleads guilty to the offense, and this right obtains in misdemeanor cases the same as in felony, unless and until waived in accordance with law.

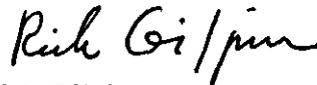
*Id.* at 684.

In our opinion, it is evident that a defendant in any criminal case, whether felony or misdemeanor, and in whatever court, must be accorded the right of trial by jury.

**S U M M A R Y**

A defendant charged with a misdemeanor in justice court is entitled to a jury trial by the terms of article I, section 10 of the Texas Constitution.

Yours very truly,

A handwritten signature in cursive script that reads "Rick Gilpin".

Rick Gilpin  
Deputy Chair  
Opinion Committee