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Hon. Dan Morales  
Attorney General of Texas  
Supreme Court Building  
P.O. Box 12548  
Austin, TX 78711-2548

Attention: Mr. Rick Gilpin  
Opinion Committee

Gentlemen:

Please advise us regarding the following question:

May a justice of the peace maintain his criminal docket by the use of electronic data processing equipment without maintaining his docket on hard copy?

Tex. Code Crim Proc. Ann. art. 45.13 (Vernon Supp. 1991) requires justices of the peace to maintain a docket of all criminal proceedings before the justice. It further states that the information in the docket may be processed and stored by the use of electronic data processing equipment. The article however fails to address whether justices of the peace are required to maintain a hard copy criminal docket sheet if they elect to store the information in their dockets by use of electronic data processing equipment.

Please furnish us with your opinion on the question presented. A Memorandum Brief is enclosed.

Sincerely,

MIKE DRISCOLL  
County Attorney

*Valerie B. Ueckert*  
By Valerie B. Ueckert  
Assistant County Attorney

**ACCOMPANIED BY ENCLOSURES —  
FILED SEPARATELY**

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MEMORANDUM BRIEF

This memorandum brief addresses the following question:

Can a justice of the peace maintain his criminal docket by the use of electronic data processing equipment without maintaining his docket on hard copy?

Tex. Code Crim. Proc. Ann. art. 45.13 (Vernon Supp. 1991), which requires justices of the peace to maintain a docket of all criminal trials before the justice, reads as follows:

(a) Each justice of the peace and each municipal court judge shall keep a docket in which he shall enter the proceedings of each trial had before him, which docket shall show:

1. The style of the action;
2. The nature of the offense charged;
3. The date the warrant was issued and the return made thereon;
4. The time when the examination or trial was had, and if a trial, whether it was by a jury or by himself;
5. The verdict of the jury, if any;
6. The judgment and sentence of the court;
7. Motion for new trial, if any, and the decision thereon;
8. If an appeal was taken; and
9. The time when, and the manner in which, the judgment and sentence was enforced;

(b) The information in the docket may be processed and stored by use of electronic data processing equipment, at the discretion of the justice of the peace or the municipal court judge. (underlined portions added by Act of June 14, 1989, ch. 499, 1989 Tex. Gen. Laws 1684, 1684-1685.)

The statute however fails to address whether justices of the peace are required to maintain a hard copy criminal docket sheet if they elect to store the information in their dockets by use of electronic data processing equipment.

The rules of statutory construction lend support to the argument that justices of the peace have the option to keep their docket by either hard copy or by use of electronic data processing equipment. Tex. Gov't Code Ann. §311.011 (Vernon 1988) requires statutes to be read in context and construed according to the rules of grammar and common usage. In accordance therewith, section (a) of article 45.13 creates a duty to maintain a docket without stating the particular form of the docket. Section (b) then uses the permissive term "may" to provide an alternative to the traditional manual method implied in section (a). The use of the word "may" allows a justice of the peace to choose between maintaining his docket on hard copy or maintaining his docket by the use of electronic data processing equipment. American Mortgage Co. v. Samuell, 108 S.W.2d 193, 198 (Tex. 1937) (may should not be construed to mean shall). Furthermore, Tex. Gov't Code Ann. §311.023 (Vernon 1988) provides that common construction aids shall include the object sought to be obtained by the statute and the legislative history of the statute. In Crimmons v. Lowry, 691 S.W.2d 582 (Tex. 1985), the court stated:

A fundamental rule controlling the construction of a statute is to determine, if possible, the intent of the legislature as expressed in the statute. However, legislative intent is the law itself, and must be enforced if determined although it may not be consistent with the strict letter of the statute. (Emphasis added.)

State Representative Fred Hill, author of the amendment to article 45.13, stated in a letter to Justice of the Peace Judge H. N. McElroy:

The intent of H. B. 1101 [amendment to article 45.13] was that J.P. dockets not have to be maintained in hard copy format. Storage by electronic data processing means to be adequate assuming a hard copy can be generated when needed.

If the views of the sponsor of the electronic data processing equipment amendment to article 45.13 are any guide to the Legislature's intent, then article 45.13 will allow justices to keep their dockets either on hard copy or by use of electronic data processing equipment.

Another example of the Legislature's attempt to move the judiciary from the scribe to the data entry operator is the

revision of Tex. R. Civ. Pro. 26 which reads:

Each clerk shall also keep a court docket in a permanent record that shall include the number of the case and the names of parties, the names of attorneys, the nature of the action, the pleas, the motions, and the ruling of the court as made. (Emphasis added.)

A 1990 amendment to Rule 26 substituted the words "permanent record" for the words "well bound book," thereby removing the requirement of a hard copy.

In furtherance of the elimination of the hard copy requirement, the Legislature also enacted Tex. Loc. Gov't Code Ann. ch. 205 (Vernon Supp. 1991), entitled "Electronic Storage of Records". Tex. Loc. Gov't Code Ann. §205.002 (Vernon Supp. 1991) provides:

Any local government record data may be stored electronically in addition to or instead of source documents in paper or other media, subject to the requirements of this chapter and the rules adopted under it. (Emphasis added.)

Section 205.002 shows the Legislature's intent to allow electronic storage of government records to replace the traditional manual method. Moreover, with modern storage equipment and appropriate support systems, the risk of losing electronically stored data is no greater than the risk of a paper record being destroyed.

Common construction aids that provide insight into legislative intent in conjunction with the general authorization, found in chapter 205 of the Tex. Loc. Gov't Code, to use electronic data processing equipment in lieu of hard copy, strongly suggest that the Legislature means to allow justices of the peace to have the option of keeping their docket solely by use of electronic data processing equipment.