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COUNTY of KLEBERG
KINGSVILLE, TEXAS

September 10, 1991

1D# 13588
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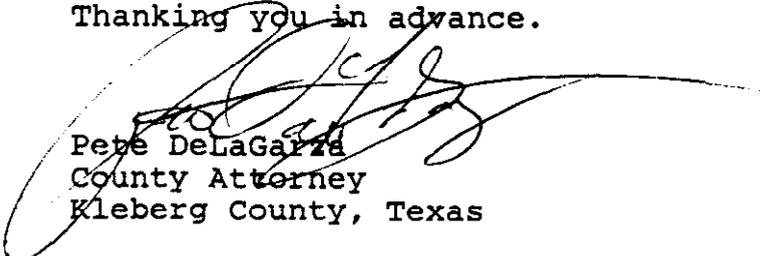
Opinion Committee

RD-232
Mr. Edwin Horne
Asst. Attorney General
P.O. Box 12548
Capitol Station
Austin, Texas 78711

Dear Mr. Horne:

Enclosed please find questions for an opinion of the Attorney General of Texas pursuant to the authority of Sections 402.042 and 402.043 of the Texas Government Code.

Thanking you in advance.


Pete DeLaGarza
County Attorney
Kleberg County, Texas

PDLG/djr

Encl.

**ACCOMPANIED BY ENCLOSURES —
FILED SEPARATELY**

SEP 12 1991

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COUNTY of KLEBERG
KINGSVILLE, TEXAS

The following questions are respectfully submitted for the considered opinion of the Office of the Attorney General of Texas pursuant to the authority of Sections 402.042 and 402.043 of the Texas Government Code.

Question #1: May a district judge, who serves as the Local Administrative District Judge, assign a county court at law judge to preside in the district court over felony jury and non-jury trials even though the county court a law would not otherwise have jurisdiction to hear such cases, and, over civil cases wherein the amount in controversy exceeds the jurisdictional limits of the county court a law?

Question #2: May the Regional Presiding Judge assign a county court at law judge to preside in a district court over felony jury and non-jury trials even though the county court at law would not otherwise have jurisdiction to hear such cases, and, over civil cases wherein the amount in controversy exceeds the jurisdictional limits of the county court at law?

Conclusions:

Question number 1 should be answered in the negative.

The Court Administration Act establishes a scheme in which judges are assigned by the Regional Presiding Judge and not the Local Administrative District Judge.

Question number 2 can be answered in the affirmative. Limitations on the assignment of a statutory county court judge to sit for a district judge were specifically repealed in 1987 and provisions enacted specifically for such assignments.

Facts:

The judge of the 105th District Court, who serves as the Local Administrative Judge of Kleberg County, has promulgated various local rules pertaining to the management of his docket in Kleberg County. Local Rule 3.010 provides that "the Local Administrative District Judge may assign the Judge of the County Court at Law to preside over any case, whether civil or criminal, or for pretrial or trial." Additionally, Local Rule 5.134 reads as follows:

The District Court shall conduct the trials of felony jury and non-jury cases, and, in its discretion, may assign the Judge of the County Court at Law to conduct the trial of any felony jury or non-jury case as Local Administrative District Judge. (Emphasis added.)

These rules are to be given temporary effect on September 1, 1991, pending final approval by the Texas Supreme Court.

Analysis:

Question number should be answered in the negative without having to address the jurisdictional question. In

arriving at this conclusion, one must distinguish between the assignment of judges and the assignment of cases. The Court Administration Act establishes a scheme in which judges are assigned by the Regional Presiding Judge and not by the local Administrative District Judge. TEX. GOVT. CODE ANN. Sections 74.052, 74.058, 74.059, (Vernons 1988) and Sections 74.053, 74.054, 74.055, 74.056, 74.060, 74.061, (Vernons Supp. 1990-1991). Sections 74.094 of the Texas Government Code provides that:

(a) A district or statutory county court judge may hear and determine a matter pending in any district or statutory county court in the county regardless of whether the matter is preliminary or final or whether there is a judgment in the matter. The judge may sign a judgment or order in any of the courts regardless of whether the case is transferred. The judgment, order, or action is valid and binding as if the case were pending in the court of the judge who acts in the matter. The authority of this subsection applies to an active, former, or retired judge assigned to a court having jurisdiction as provided by Subchapter C.

(b) The judge shall try any case and hear any proceeding as assigned by the local administrative judge. Emphasis added. (Vernons Supp. 1990-1991)

Subchapter C of the Texas Government Code includes

provisions which pertain to the Regional Presiding Judge and his ability to assign judges. There is likewise included within Subchapter C a procedure whereby counsel may object to the assignment of a particular judge. If Section 74.094 is interpreted to allow the Local Administrative District Judge the ability to assign judges none of these safeguards would be available to counsel.

Question number 2 should be answered in the affirmative. Within the parameters of certain constitutional limitations the legislature has great latitude to establish courts and determine their jurisdiction. See generally 1 R. McDonald, Texas Civil Practice Sections 1.19.1-1.19.2 (rev. 1981). Similarly, the legislature has equally broad authority when it comes to establishing officers of the Court and their duties. "The judge, though frequently referred to as the "the court," is not the court, and this must be borne in mind in interpreting statutes which confer upon the court or the judge authority to perform certain acts." 1 R. McDonald, Texas Civil Practice, Section 1.20 (rev. 1981).

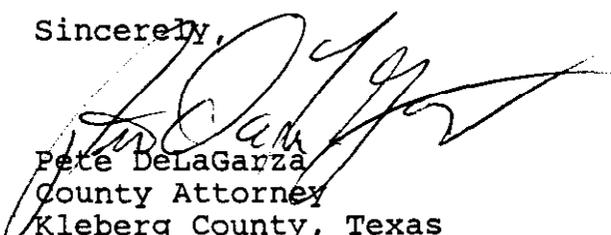
The historical notes under Sections 74.052 and 74.095 of the Texas Gov't. Code provide a beginning point. (Vernon Supp. 1990-1991) and (Vernon 1988). Provisions of each section prior to September 1, 1987 specifically prohibited assigning a judge or adopting rules which would allow him to act in a case over which his own court did not have jurisdiction. Such limitations were repealed effective September 1, 1987.

Section 74.094 of the Texas Government Code was passed by the legislature in 1987. Numerous other changes were made by the 70th legislature in 1987. Sections 74.054 and 74.056 were enacted with an apparent intention of removing certain historic distinctions between district and statutory county court judges.

Act of June 18, 1987, Ch. 674, Sections 2.05, 2.06, 2.07, 2.10, 2.13, 1987 Tex. Sess. Law Serv. 2513-2516 (Vernon).

It seems apparent that the Legislature in 1987 intended to create an even greater availability of judges to dispose of burgeoning dockets by authorizing the Regional Presiding Judge to assign statutory county court judges to hear matters in district courts.

Sincerely,



Pete DeLaGarza
County Attorney
Kleberg County, Texas

PDLG/djr