

COUNTY OF KENEDY

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TREASURER



ROY C. TURCOTTE
COUNTY ATTORNEY

COUNTY COMMISSIONERS:
LEONARD MAY
LOUIS E. TURCOTTE, JR.
TOBIN ARMSTRONG
GUS A. PUENTE

SARITA, TEXAS 78385

October 1, 1993

MBJ
FILE # ML-226 90-93

Honorable Dan Morales OCT 1 1 1993
Attorney General of Texas
Supreme Court Building
Austin, Texas 78711-2548

I.D.# 226 90

RQ-626

Dear General Morales,

The 105th Judicial District is a multicounty judicial district comprising Kenedy, Kleberg, and Nueces counties. The county seat of Kenedy County is Sarita, the county seat of Kleberg County is Kingsville, and the county seat of Nueces County is Corpus Christi.

BACKGROUND

The Sarita checkpoint is a United States Immigration and Customs station located in Kenedy County. Each year, through the combined cooperative efforts of various federal, state, and local law enforcement agencies, hundreds of cases involving illegal activities and contraband seizures are initiated at this interdiction site.

In a typical case, the detainee, if he meets established guidelines and criteria, is turned over to state and local law enforcement officers for arrest and subsequent prosecution. Normally he is taken to Kleberg County to be magisterated, bonded, and released on bail. The case is then presented to a Kleberg County grand jury and an indictment returned. Later, at arraignment, if the defendant desires to plead guilty to the indictment, usually he will sign a "consent to venue" form. In the unusual case, when a defendant objects to venue in Kleberg County or otherwise refuses the "consent to venue" form, the indictment is dismissed. The case is then transferred to Kenedy County to be presented and considered by a Kenedy County grand jury, typically resulting in an indictment.

This scenario raises in my mind fundamental questions concerning the territorial jurisdiction and extraterritorial jurisdiction of a grand jury within multicounty judicial districts.

QUESTIONS

Are Articles 13.20 and 13.22 of the Texas Code of Criminal Procedure mere permissive venue statutes, or are these statutes intended to confer extraterritorial jurisdiction on grand juries within multicounty judicial districts?

Does the phrase "may be prosecuted", as used throughout the venue statutes found in Chapter Thirteen of the Texas Code of Criminal Procedure, mean a grand jury can indict for an offense that occurs in another county?

Does a Kleberg County grand jury have jurisdictional authority to return a valid and legal indictment for an offense that occurs in Kenedy County? When a defendant consents to venue? When a defendant does not consent to venue? Can jurisdiction be conferred by consent?

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MY RESEARCH

I find several old judicial holdings for the proposition that a grand jury has no power to inquire concerning offenses committed beyond the county's boundaries. These cases are Pigg v. State, 160 S.W. 691, 693 (Tex. Crim. App. - 1913) no writ history, and Rodgers v. County of Taylor, 368 S.W.2d 794, 796 (Tex. Civ. App. - Eastland, 1963) no writ history. In Pigg, a Hamilton County grand jury returned an indictment for perjury when the defendant testified under oath before the grand jury concerning his gambling activities on baseball games in an adjacent county. The high court dismissed the indictment holding the grand jury was without authority to investigate illegal activities beyond the county line.

There is a dearth of current authority on this point. I do find a judicial pronouncement that "the jurisdiction of a grand jury is coextensive with the jurisdiction of the court of which it is an appendage." In re May 1972 San Antonio Grand Jury, 366 F. Supp. 522. If it is the rule of law that the jurisdictional authority of a grand jury is coextensive with the territorial jurisdiction of the court for which it services in a multicounty judicial district, then this logic would seem to authorize a grand jury to investigate activities in any county within the judicial district. Conceivably then, a Kenedy County grand jury could investigate and return indictments for offenses occurring in Nueces or Kleberg counties. I think this would be highly improper. I do not believe this is the result intended by the 1966 amendment to Article 20.09 of the Texas Code of Criminal Procedure.

I appreciate your thoughts and comments on the subject.

Your humble servant,



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cc: Honorable Carlos Valdez
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