

RICHARD J. MILLER

County Attorney

P. O. Box 1127  
Belton, Texas 76513

RECEIVED

OCT 23 1996

Bell County, Texas

Opinion Committee

(817) 933-5135  
1-800-460-2355  
FAX (817) 933-5150

October 21, 1996

RECEIVED

OCT 22 1996

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

OPEN RECORD DIVISION

**RQ-921**

FILE # ML 39204

D.# 39204

Re: Request for Attorney General's Opinion

Dear Sir:

Bell County recently entered into a "Management Agreement" with a private corporation for the operation of the county's juvenile detention facility. A question has arisen as to the interpretation of *Tex.Fam.Code Sec. 51.12(b)*:

*The proper authorities in each county shall provide a suitable place of detention for children who are parties to proceedings under this title, but the juvenile court shall control the conditions and terms of detention and detention supervision and shall permit visitation with the child at all reasonable times. (Emphasis added)*

It is clear from the *Family Code* that the county's Juvenile Board and Juvenile Court Judge are responsible for inspecting detention facilities and certifying to the Commissioners Court ("the authorities responsible for operating and giving financial support to the facilities") and the Texas Juvenile Probation Commission that the facilities meet certain minimum professional standards as adopted by the Juvenile Board. *Tex.Fam.Code Sec. 51.12(b)*.

The Bell County Juvenile Board was established under *Tex.Hum.Res. Code Sec. 152.0201*. The Bell County Board is composed of the County Judge, who is the permanent chairman, and the four district judges and the judges of the two county courts-at-law. County Court-at-law No. One is the designated Juvenile Court. In a bizarre note, Section 152.0201 makes inapplicable to Bell County those provisions of Section 152 *et seq* that require quarterly board meetings (152.0002), the payment by the commissioners court of juvenile probation salaries and other expenses certified by the board (Sec. 152.0004), the reimbursement of Juvenile Board members for reasonable expenses incurred (152.0005), a designated fiscal officer (Sec. 152.0006), that set out the duties of the Board (Sec. 152.0007), and that give the chief juvenile probation officer the authority to appoint necessary personnel with Board approval (Sec. 152.0008).

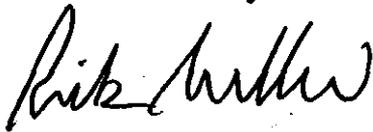
However, another statute appears to give the Juvenile Board the authority, "with the advice and consent of the commissioners court," to employ juvenile probation personnel, as well as designate their titles and set their salaries. *Tex.Hum.Res. Code Sec. 142.002*. The term "juvenile

within the standards established by the Juvenile Probation Commission, regardless of any agreement between a private corporation and the Juvenile Board and Commissioners Court? How does that language co-exist with other statutes (cited above) where it would seem, except for Sec. 51.12(b), that the legislature intended that the Juvenile Board play the primary role in operating and supervising detention facilities?

Attached for your reference are some exhibits that may be of some assistance. One is a letter from Mr. Robert T. Bass, attorney representing the Commissioners Court in this matter, giving a perspective that the Juvenile Court does not have the broad authority over the operation of the detention facility that is suggested by Sec. 51.12(b) of the *Family Code*. Also attached is a copy of a letter from Lisa Capers, general counsel for the Texas Juvenile Probation Commission, that gives the opinion that a plain reading of the statute indicates the legislature's intent to give the juvenile court broad oversight authority over detention operations. Finally, I include a copy of the legislative intent in H.B. 327 (Sec. 152.0012, *Tex.Hum.Res.Code*) with regard to commissioners court review of the juvenile probation department budget, reflecting no intent to authorize any approval or veto power on the part of a commissioners court "in matters of the juvenile probation funding *or the juvenile court system.*"

Your assistance in defining this statutory provision will be greatly appreciated.

Yours very truly,



Richard J. Miller  
Bell County Attorney

cf: Hon. John Garth  
Bell County Judge

Hon. Rick Morris  
Judge, 146th Judicial District Court

Hon: Edward Johnson  
Judge, Bell County Court-at-Law No. One

Hon. Robert Bass  
Allison & Associates

Lisa Capers  
Texas Juvenile Probation Commission

probation services" includes "services provided by a juvenile probation department that is related to the operation of a juvenile detention facility." *Tex. Hum. Res. Code Sec. 142.001(2)*. The Texas Juvenile Probation Commission is responsible for setting minimum standards for juvenile detention facilities. *Tex. Hum. Res. Code Sec. 142.042(a)(4)*. In addition, *Tex. Hum. Res. Code Sec. 152.0012* mandates that the Juvenile Board shall prepare a budget for the juvenile probation department "and the other facilities and programs under the jurisdiction of the juvenile board," and county commissioners may only review and consider that portion of the budget involving expenditure of county funds derived from county taxes, fees, and other county sources, but not state funds.

The minimum standards called for by Section 142.042(a)(4) of the *Human Resources Code* are set out in *37 TAC 343.1 et seq.*, the "Standards for Juvenile Detention Facilities," which make mandatory the setting of policy for a facility by the Juvenile Board, which must address personnel, administration, child care, programmatic matters, and training. These standards also require that the designated "Superintendent of Detention," who must be eligible for certification as a juvenile probation officer, be responsible for a variety of activities related to the detention facility, ranging from budget control to "overseeing all phases of the daily program, including staff schedules, maintenance, food service, educational programs, purchases, and housekeeping." *37 TAC 343.2*. In another mandatory provision, "An intake or other officer authorized by the court is on duty at the detention facility or on call 24 hours a day." *37 TAC 343.14*. This superintendent is also required to coordinate educational programs with local school officials, as well as to designate staff members as library, recreation, and religious coordinators.

The management agreement in Bell County, signed by the County Judge on behalf of the Commissioners Court as well as on behalf of the Juvenile Board, provides that the private corporation shall "operate, maintain, and manage" the juvenile detention facility in accordance with the standards of the Texas Juvenile Probation Commission, "subject to approval by the Juvenile Board." The corporation is to develop its own written policies, procedures, and operation manuals concerning operation of the facility "and juvenile supervision for which it is responsible" under the agreement, which policies must comply with legal requirements. Among the duties and responsibilities of the corporation under the agreement will be the day-to-day management of the facility, staffing, employee training, program services for juvenile detainees (with the advise and consent of the Juvenile Board), and providing security and supervision of the juveniles.

The only role spelled out in the Management Agreement for the designated Juvenile Court is one of inspection, as required under the *Family Code*.

Thus, given this set of facts and management agreement with a private corporation, what is the specific authority of the designated Juvenile Court when Section 51.12(b) says that the Juvenile Court "shall control the conditions and terms of detention and detention supervision and shall permit visitation with the child at all reasonable times?" If the required policies of the private corporation are adopted by the Juvenile Board, is the Juvenile Court empowered by Section 51.12(b) to order different activities or policies independent of those adopted by the Juvenile Board, so long as minimum standards are met? Does the Juvenile Court have the statutory authority to specifically direct all aspects of the day-to-day operation of the detention facility

**ALLISON & ASSOCIATES**

*Attorneys at Law*

WAHRENBERGER HOUSE

208 WEST 14TH STREET

AUSTIN, TEXAS 78701

(512) 482-0701

FAX: (512) 480-0902

**JAMES P. ALLISON**

**ROBERT T. BASS**

SENIOR ASSOCIATE

**C. REX HALL, JR.**

**ANTHONY J. NELSON**

October 14, 1996

**VIA REGULAR MAIL**

Hon. Richard J. Miller  
County Attorney, Bell County  
P.O. Box 1127  
Belton, Texas 76513

**RE: Request for Attorney General's Opinion**

Dear Richard,

I appreciate the opportunity to review and comment on your proposed letter requesting an Attorney General's Opinion on the statutory authority of the Juvenile Court. I believe your letter properly outlines the dispute. I have the following comments, and would request that you consider attaching my letter to your formal request, so that the Attorney General might have a fuller understanding of the dynamics of the dispute.

As you know, this issue came to light in the drafting of a management agreement between the Bell County Juvenile Board, the Commissioners Court, and Correctional Services Corporation of Sarasota, Florida. The judge of the Bell County Juvenile Court felt that pursuant to §51.12(b) of the Texas Family Code, the Juvenile Court had direct supervisory authority for virtually every aspect of operations in the juvenile facility, not only for those juveniles housed in the facility by direct Orders of that Juvenile Court, but over juveniles placed in the facility by other jurisdictions.

Upon the advise of legal counsel, Bell County, acting through it's commissioners court, refused to modify the management agreement to extend to the Juvenile Court by contract any powers and authority not specifically imposed by law. Our reading of applicable statutes indicated that the Juvenile Board was the proper operating authority. Under our interpretation of the entire body of law pertaining to the detention of Juveniles, we believe the Juvenile Court is vested only with the following authority:

- (1) to control the terms and conditions of detention pursuant to §51.12(b) of the Family Code on a case by case basis in juvenile cases coming before the Court, and

- (2) to certify a detention facility as suitable or unsuitable for the housing of juveniles pursuant to §51.12(c) of the Family Code.

It is worthy to note that the language in §51.12(c) refers to certification of the facility to those "authorities responsible for funding and operating the facility". This language seems to expressly preclude any interpretation of §51.12(b) which would create overarching control of operational aspects of detention in the Juvenile Court. The applicable statutory language from the Family Code is set forth below:

§51.12 (b) The *proper authorities* in each county shall provide a suitable place of detention for children who are parties to proceedings under this title, but *the juvenile court shall control the conditions and terms of detention and detention supervision* and shall permit visitation with the child at all reasonable times.

§51.12 (c) In each county, the judge of the *juvenile court and the members of the juvenile board* shall personally inspect the detention facilities and any public or private secure correctional facilities used for post-adjudication confinement that are located in the county and *operated under authority of the juvenile board* at least annually and shall certify in writing to the authorities responsible for *operating and giving financial support* to the facilities and to the Texas Juvenile Probation Commission that they are suitable or unsuitable for the detention of children in accordance with:

- (1) the requirements of Subsections (a), (f), and (g); and
- (2) minimum professional standards for the detention of children in pre-adjudication or post-adjudication secure confinement promulgated by the Texas Juvenile Probation Commission or, at the *election of the juvenile board*, the current standards promulgated by the American Correctional Association.

The emphasized portions of the statutory language make clear distinctions between the power to operate the facility and the responsibility to fund the facility. The Juvenile Board is clearly identified throughout the applicable statutory scheme as the operating entity, and the Commissioners Court (along with the State in some cases) is clearly identified as the entity responsible for funding. See §141.002(4) of the Human Resources Code, which defines the "Juvenile board" as a body established by law to provide juvenile probation services to a county. Other than the isolated instance in §51.12(b) regarding control over the terms and conditions of detention, and the duty to inspect the facility in §51.12(c), the Juvenile Court is never clearly referred to by the Legislature in connection with operation of a detention facility. As noted in your letter to the Attorney General, the regulations contained in 37 TAC 343.1 et seq, make

Hon. Richard J. Miller

October 14, 1996

Page 3

only isolated and oblique reference to "the court", and only then in regard to narrow issues which could not be said to infer day to day "control" over the facility by the Juvenile Court.

§51.12(d)(2) of the Family Code clearly gives the Juvenile Board the ability to determine the standards by which the facility will be operated. From this "organizational" structure, it is apparent that the extent of the Juvenile Court's authority is limited to those juveniles directly under the Court's jurisdiction, and only then to the extent necessary to insure that the facility to which these specific juveniles are entrusted is operated in accordance with law as a suitable place for detention of juveniles. There is no substantive legal basis for the extension of judicial supervision into the myriad operational aspects of a juvenile facility by the Juvenile Court.

Finally, and as illustration only, assuming that Juvenile Courts do in fact have the powers and authority urged by the Judge of the Bell County Juvenile Court, the inevitable result is that in a facility such as Bell County's, where roughly one-half of the available beds will be occupied by juveniles from other jurisdictions, the following math will transpire:

Each County has a Juvenile Board. Each Juvenile Board has one or more Juvenile Courts. Each juvenile transferred to Bell County will come from a referring County, and from a Juvenile Court. Conceptually, the Bell County Juvenile facility would be required to comply with potentially conflicting directives from at least four or more separate authorities for each juvenile referred from another county, with each entity claiming power to direct, control or approve the daily operations of the juvenile detention facility:

1. The Juvenile Board of Bell County
2. The Juvenile Court of Bell County
3. The Juvenile Board of the referring County
4. The Juvenile Court referring the Juvenile
5. Possibly one or more of any other Juvenile Courts of the referring county.

Additionally, since Bell County may in the future have more than one Juvenile Court of its own, the effect would be multiplied even more if each of these Juvenile Courts were to assert the right to impose its own set of directives, which might in turn conflict with those of other Juvenile Courts, and those of the Juvenile Board.

Obviously, the resulting chaos which would result from the interpretation of §51.12(b) urged by the Bell County Juvenile Court Judge would be detrimental to the interests of the county, society and the juvenile, not to mention extremely unwieldy and unmanageable from a

Hon. Richard J. Miller  
October 14, 1996  
Page 4

practical point alone. We urge an opinion which clarifies, rather than further confuses, the present standing of the applicable law in this critical area. Your assistance is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Bass', enclosed within a large, hand-drawn oval shape.

Robert T. "Bob" Bass

BB:mm



## TEXAS JUVENILE PROBATION COMMISSION

P.O. Box 13547, Austin, Texas 78711

Telephone (512) 424-6700, TDD (512) 483-4000, FAX (512) 424-6717

EXECUTIVE DIRECTOR

Vicki Wright

August 27, 1996

The Honorable Edward Johnson  
County Court at Law #1  
P.O. Box 781  
Belton, Texas 76513

RE: Texas Family Code Section 51.12(b)

Dear Judge Johnson:

You have asked for my interpretation of Section 51.12(b) of the Texas Family Code as it relates to the powers and duties of juvenile court judges. Section 51.12(b) states:

*(b) The proper authorities in each county shall provide a suitable place of detention for children who are parties to proceedings under this title, but the juvenile court shall control the conditions and terms of detention and detention supervision and shall permit visitation with the child at all reasonable times. [Emphasis added.]*

Throughout the new Juvenile Justice Code, juvenile court judges are given the authority and mandate to oversee and control the processing of juvenile offenders in a wide variety of ways. Beginning with the arrest/detention of a juvenile offender, the juvenile court has the authority to designate juvenile processing offices and control the conditions and activities that may occur in that office pursuant to Section 52.025. Under Section 52.02, the juvenile court controls the intake procedures and processes for the county. Additionally, in Chapter 152 of the Texas Human Resources Code, juvenile court judges are mandated to be members of the local juvenile board which controls the operation and provision of juvenile probation services.

Section 51.12(b) further defines the powers of juvenile courts to include control over the conditions and terms of detention and detention supervision. The issue seems to be what exactly is meant by this provision. It is my opinion that to control the terms of detention and detention supervision, the juvenile court must have more authority than to simply specify the length and location of the detention placement (both pre-adjudication and post-adjudication). A narrow interpretation of Section 51.12(b) does not seem to recognize the critical role of juvenile court judges in the statutory scheme of the juvenile justice system. To truly control the conditions and terms of detention and detention supervision, arguably the juvenile court judge must have some ability to influence

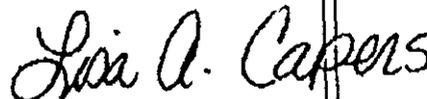
Page 2

operations of the facility, especially as it relates to particular programming that the child will receive in the specific facility.

I think it is important to note that juvenile court judges are not merely the rubber stamp of juvenile boards, although they serve on the juvenile board in an administrative capacity. Section 51.12(c) clearly provides that the juvenile court judges and the members of the juvenile board must certify the suitability of any pre- and post-adjudication juvenile detention facility. I believe this section clearly makes the distinction between the court and the juvenile board, placing an equal voice of authority on the juvenile court to perform the mandatory certification. I believe the juvenile court judge is performing a judicial function in certifying the facility. If the legislature did not value the opinion of the juvenile court judge, Section 51.12 could certainly have been limited to juvenile board certification. The same argument can be made for Section 51.12(b). Obviously, the legislature intended to give juvenile court judges oversight of the conditions and terms of detention and detention supervision by the enactment of Section 51.12(b), and I do not believe this duty can be dismissed lightly. Juvenile court judges should use due diligence to meaningfully control the terms and conditions of detention and detention supervision.

I hope this information is helpful to you. Please do not hesitate to call me if you have any questions. Thank you.

Sincerely,



Lisa A. Capers  
General Counsel

LAC:xx

Intent of the Legislature on language in H.B. 327 regarding county commissioners court budget review of juvenile probation budgets:

**The language agreed to in Conference Committee on H.B. 327 included a provision that requires the juvenile board to prepare a budget for the juvenile probation department and allows the commissioners court to review and consider that budget. The intent of the Conference Committee was to allow commissioners court an opportunity to review juvenile probation budgets in order to adequately prepare for the level of county funding necessary for the operations of the juvenile court system.**

**This provision is not intended in any way to infer, imply or authorize a commissioners court approval or veto power in matters of the juvenile probation funding or the juvenile court system.**

---



## MEMORANDUM

**TO:** Interested Parties  
**FROM:** Sarah J. Shirley, Chair, Opinion Committee   
**SUBJECT:** Attached Opinion Request

---

If you are interested in submitting a brief regarding the attached opinion request, we ask that you do so within thirty days of the date on the attached acknowledgement letter. We have informally set this thirty-day briefing period as a matter of policy to ensure that the Opinion Committee will have adequate time to review and consider arguments relevant to the request from all interested parties. If you need additional time in which to submit your comments, please let us know by calling (512) 463-2110, so that we can make the appropriate file notation.

This office is happy to provide you with copies of briefs submitted by other interested parties. However, in order to expedite receipt of those briefs, I suggest that you contact those parties directly and request that they provide you with a copy of their submission.

Thank you for your cooperation.