



WAGGONER GARR  
ATTORNEY GENERAL

ATTORNEY GENERAL  
OF TEXAS

AUSTIN, TEXAS 78711

February 9, 1966

Overruled by

H-1026

Overruled by

Bradley  
vs. ~~Subcommittee~~

NO 4785

appeal from Knox Co

525 SW 2d 280

Affirma (24 on 9/1)

V- 496 Eastland 1975

O- 6940

Honorable D. Brooks Cofer, Jr.  
District Attorney  
Brazos County Courthouse  
Bryan, Texas

Opinion No. (C- 602)

Re: Validity of Articles  
4.12 and 45.22, Code of  
Criminal Procedure of  
Texas, 1966.

Dear Mr. Cofer:

In a recent opinion request of this office you pose the following question:

"Does Article 4.12, Code of Criminal Procedure of Texas, 1966, conflict with Article V, Section 19, Constitution of the State of Texas, and does Article 4.22, CCP, 1966 also conflict with the same constitutional provision."

Article V, Section 19, Constitution of the State of Texas, provides as follows:

"Justices of the Peace shall have jurisdiction in criminal matters of all cases where the penalty or fine to be imposed by law may not be more than two hundred dollars (\$200), and in civil matters of all cases where the amount in controversy is two hundred dollars (\$200) or less, exclusive of interest, of which original jurisdiction is not given to the district or county courts; and such other jurisdiction is not given to the district or county courts; and such other jurisdiction, criminal and civil as may be provided by law, under such regulations as may be prescribed by law; . . ."

Article 4.12, Vernon's Code of Criminal Procedure, 1966, the first Article about which you inquire states as follows:

"A misdemeanor case to be tried in justice court shall be tried in the precinct in

which the offense was committed, or in which the defendant or any of the defendants reside, or with the written consent of the state and each defendant or his attorney, in any other precinct within the county; provided that in any misdemeanor case in which the offense was committed in a precinct where there is no qualified justice precinct court, then trial shall be had in the next adjacent precinct in the same county which may have a duly qualified justice precinct court, or in the precinct in which the defendant may reside; provided that in any such misdemeanor case, upon disqualification for any reason of all justices of the peace in the precinct where the offense was committed, such case may be tried in the next adjoining precinct in the same county, having a duly qualified justice of the peace."

It should first be noted that Article 4.12, is very similar to the article in the old Code of Criminal Procedure, 60a, Code of Criminal Procedure, 1925, which it replaced. Although the wording of these two mentioned articles is somewhat different, the intent of each is to accomplish the same purpose, namely, setting out rules governing the precinct in which a misdemeanor case on the justice court level would be tried. This office on at least two separate occasions has held Article 60a, to be unconstitutional. Opinion No. O-6940, 1945, and Opinion No. V-496, 1948.

The above quoted Article 4.12, prescribes certain limitations upon the authority of justice courts to try misdemeanor cases, and it seems to forbid the trial of any misdemeanor cases by justice courts outside and beyond the limitations set forth therein. In essence, the purpose of this article is to prohibit or forbid justice courts from trying misdemeanor cases when the case does not arrive or come into the justice court in a manner prescribed in the article. In the case of Ex parte Von Koerneritz, 286 SW 987 (Tex. Crim. App. 1926) the court held that a justice of the peace court has the authority to try a case which arose in another precinct in the county, even though the defendant had the undisputed right to have the case tried in another precinct. Article 4.12, would place certain limitations upon this jurisdiction of justice courts, and therefore it is the opinion of this office that Article 4.12 is unconstitutional since it contravenes the provisions of Article V, Section 19, Constitution of The State of Texas.

Your next inquiry is with regard to Article 45.22, Code of Criminal Procedure, 1966. Said Article provides as follows:

"Section 1. No person shall ever be tried in any justice precinct court unless the offense with which he was charged was committed in such precinct. Provided, however, should there be no duly qualified justice precinct court in the precinct where such offense was committed, then the defendant shall be tried in the justice precinct next adjacent which may have a duly qualified justice court. And provided further, that if the justice of the peace of the precinct in which the offense was committed is disqualified for any reason for trying the case, then such defendant may be tried in some other justice precinct within the county.

"Section 2. No constable shall be allowed a fee in any misdemeanor case arising in any precinct other than the one for which he has been elected or appointed, except through an order duly entered upon the minutes of the county commissioners court.

"Section 3. Any justice of the peace, constable or deputy constable violating this Act shall be punished by a fine of not less than \$100 nor more than \$500.

"Section 4. The provisions of this Article shall apply only to counties having a population of 225,000 or over according to the last preceding federal census."

In our opinion the same reasoning set out above with regard to Article 4.12 applies when considering Article 45.22. It is our opinion, therefore, that Article 45.22, is also unconstitutional since it contravenes the provisions of Article V, Section 19, Constitution of the State of Texas. Prior Attorney General's opinions O-6940 (1945) and V-496 (1948) are affirmed and enclosed herewith.

#### S U M M A R Y

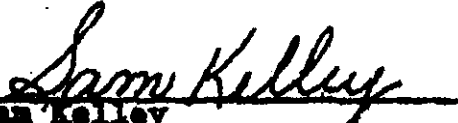
Article 4.12 and 45.22, Code of Criminal Procedure of Texas, 1966, are unconstitutional since they contravene the provisions of

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Article V, Section 19, Constitution of the  
State of Texas.

Yours very truly,

WAGGONER CARR  
Attorney General of Texas

By.   
Sam Kelley  
Assistant Attorney General

SK/lh  
Enclosures

APPROVED

OPINION COMMITTEE

W. V. Geppert, Chairman  
John Banks  
Pat Bailey  
Milton Richardson  
David Longoria

APPROVED FOR THE ATTORNEY GENERAL  
BY: T. B. Wright