



**THE ATTORNEY GENERAL
OF TEXAS**

October 27, 1987

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Patrick O. Hardy
Criminal District Attorney
Room 201, Courthouse
Woodville, Texas 75979

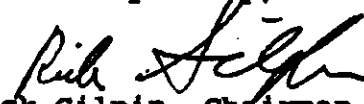
Opinion No. JM-814A
Re: Clarification of JM-814

Dear Mr. Hardy:

In Attorney General Opinion JM-814 we issued an opinion to you on the question of whether one person may serve as appointed city attorney of Woodville and also as county judge of Tyler County. The opinion quoted the statutes which prohibit a judge from hearing appeals of cases where he had been the prosecutor. If a large number of cases were appealed from the city court to the county court, the county judge would have to recuse himself repeatedly. If recusal were very frequent, the county judge might in effect be unable to fully perform the duties of office.

The conclusion of the opinion, which is stated in the last two sentences and the summary of the opinion, depends upon the assumption that a large number of cases was appealed from the Woodville municipal court to the Tyler county court. Attorney General Opinions cannot resolve questions of fact, but can only resolve legal questions. We must rely on presumed facts where a factual setting is necessary to answer a legal question. If appeals from the Woodville municipal court constitute only a small part of the county judge's caseload, then the conclusion would not be applicable to the individual in this case, and the city attorney of Woodville would not be barred by the cited provisions from serving as the county judge of Tyler County.

Yours very truly,


Rick Gilpin, Chairman
Opinion Committee