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**RENE GUERRA**

**OPINION COMMITTEE**



April 2, 2009

**RQ-0793-GA**

Office of the Attorney General  
Attorney General Gregg Abbott  
P.O. Box 12548  
Austin, Texas 78711-2548

FILE # ML-46043-09  
I.D. # 46043

RE: Opinion GA0701

Dear General Abbot:

I urgently request that the Opinions Committee clarify, modify or withdraw Opinion GA0701 dealing with truancy cases.

I believe that the Opinions Committee traditionally has commanded well-earned respect throughout the State. My office gave our school districts, justice of the peace and municipal courts the opinion that a student can be prosecuted in the precinct where the school is located. As specified in Section 25.094(b), the student can also be prosecuted in the precinct where the individual resides. I believe that GA0701 arrives at the same conclusion.

Unfortunately, a sentence in a paragraph reasoning the opinion states, "The jurisdiction of a justice court in truancy matters is not limited to the particular precinct in which a justice presides, but instead encompasses the entire county."

The Texas Code of Criminal Procedure specifies in Article 4.12 that a Class C Misdemeanor is prosecutable in the precinct where the offense is committed or where the defendant resides. Section 25.094 of the Education Code allows students and parents to be prosecuted for Class C Misdemeanors for truancy, failure to appear and contempt. It is obvious to me that the legislature has authorized their prosecution in only two possible places—where the school is located or where the student resides, and no other place.

The Hidalgo County problem is that I have a justice court that is hearing cases involving students and schools that are not within its precinct.

Respectfully yours,

Rene Guerra  
Criminal District Attorney  
Hidalgo County, Texas

RG/erh

Attachments included

## MEMORANDUM

TO: RENE GUERRA

FROM: TED HAKE

RE: J.P. COURT JURISDICTION OVER TRUANCY CASES

DATE: MARCH 30, 2009

I have read Attorney General's Opinion no. GA-0701, issued on March 27, 2009. This opinion bases its ruling on the premise that the language of TEX. EDUCATION CODE ANN. Sec. 25.094 (b) (2), stating that a truancy offense may be prosecuted in "a justice court in any precinct in the county in which the individual resides or in which the school is located", is clear and unambiguous.

This premise is not valid. The quoted language is actually very ambiguous. It can be interpreted as referring to any justice court within any precinct in the county in which the person resides or the school is located (as opposed to some other county), which is how the opinion interprets it. However, it can also be interpreted as referring to a justice court within any precinct within the county in which the individual being charged resides or in which the school involved is located, as opposed to some other precinct in the county not fitting within one of those categories.

I believe that the latter is a more logical interpretation of the statutory language because of another aspect of Texas law dealing with the jurisdiction of justice of the peace courts.

In particular, TEX. CODE CRIM. PROC. ANN. Art. 4.12 (a) provides as follows:

Except as otherwise provided by this article, a misdemeanor case to be tried in justice court should be tried:

- (1) in the precinct in which the offense was committed;
- (2) in the precinct in which the defendant or any of the defendants reside; or

(3) with the written consent of the state and each defendant or the defendant's attorney, in any other precinct within the county.

The Attorney General's Opinion ignores this requirement that, absent consent by the parties, a justice of the peace level offense has to be heard in a precinct having some relationship to the offense or the defendant.

I also believe that the way the opinion reads the statute is not logical. I find it hard to believe that the Legislature intended to allow a case involving truancy from one end of the county (such as the Progresso school district) to be heard by a justice of the peace from the other end of the county (such as the Mission area), particularly since that justice of the peace has no connection with either the defendant or the school involved.

In any event, whether one agrees with my interpretation of the statute or not, the fact remains that it is subject to more than one interpretation, meaning that the premise that it is clear and unambiguous is simply false.

An Attorney General's Opinion is just that, an opinion. I suppose the remedy, if you decide to pursue this issue further, would be to file an action seeking a judicial ruling disagreeing with this Attorney General's Opinion.

**AG opinion sides with embattled JP**

Sara Perkins  
March 30, 2009 - 6:08PM

EDINBURG -- A justice of the peace found vindication Monday with the release of a state attorney general's opinion allowing her to oversee school district truancy cases outside her precinct.

Judge Mary Alice Palacios had maintained that she could hear cases from any school district in the county. Several districts outside her precinct, including Hidalgo and Edcouch-Elsa, brought cases to her court rather than the JP in their area because of her particular interest in truancy cases.

District Attorney Rene Guerra launched a campaign last year trying to keep Palacios from accepting a federal grant to expand her court staff. He said her practice of accepting out-of-precinct cases was illegal and overstepped her authority.

Palacios is inadvertently hurting the democratic process by ruling in cases involving students and families who cannot vote to remove her from office because they live and vote in other precincts, Guerra said Monday.

The attorney general's reply, in the way of many legal decisions, hinged on the meaning and placement of the word "any" in the state's education code, Guerra said Monday. He called the decision wrong and said he was contacting the office to discuss it.

If necessary, he said, he would appeal the decision to the Supreme Court, if only to ensure that the county was not exposed to any liability should any fines she imposed be challenged in court.

Palacios' office referred questions to her attorney, Dan Rios, who said Palacios was pleased to be vindicated and would continue to administer her truancy court program the way she always has.

Her court regularly uses drug testing and screening for mental illness to assess students charged with skipping too much school. Many are referred to social services and family counseling.

Rios said he did not know whether Palacios would attempt to recover the \$491,000 Department of Justice grant originally earmarked for her court. County commissioners earlier this month decided to distribute the grant evenly among JP courts, allowing each to hire one or two new staff members to oversee truancy cases.

"I speak for attorneys and for the people of Hidalgo County when I say I hope Mr. Guerra gets over his hang-up about Judge Palacios," Rios said.

*Sara Perkins covers Mission, western Hidalgo County, Starr County and general assignments for The Monitor. You can reach her at (956) 683-4472.*

RENE GUERRA



October 17, 2008

J.D. Salinas, Hidalgo County Judge and  
Hidalgo County Commissioner's Court  
Hidalgo County Courthouse  
Edinburg, Texas 78539

Dear Judge and Commissioners:

I have been requested to determine the propriety of interlocal agreements between school districts and Hidalgo County with reference to truancy cases filed in Justice of the Peace Courts.

Information has been verified that a Justice of the Peace is requesting payment from at least two school districts to hear their truancy cases. It has also been established that school district personnel are working in and for the court on the very cases of the district complainant. Apparently, the Justice of the Peace has also been hearing cases from outside the precinct of the Court.

I believe that these requests for facilities and compensation bring up three serious questions as to the propriety and legality of these arrangements.

**Issue No. One**

Does a Justice of the Peace have jurisdiction to hear truancy cases from outside its precinct?

The answer is NO.

There are two approaches to dealing with a person's failure to attend school:

1. file a complaint in juvenile court pursuant to § 51.03 of the Texas Family Code or
2. file as a criminal charge of failure to attend school pursuant to § 25.094 of the Texas Education Code in:
  - a. a justice court of any precinct in the county in which the individual resides or in which the school is located; or
  - b. a municipal court in the municipality in which the individual resides or in which the school is located.

Please note that the Texas Constitution establishes the territorial jurisdiction of the court. Hidalgo County has nine elected Justice of the Peace Courts for five jurisdictional areas. Each justice of the peace is commissioned as justice of the peace *of the applicable precinct* (italics added). (Tex. Gov. Code Sec. 27.002). It is a well recognized principle that precinct officers or elected officials are authorized to exercise their authority in the precinct or district where they are elected. It is also known and accepted that courts cannot assume the authority and responsibilities of other courts unless the authority can be granted under certain circumstances of disqualification or inability to perform on a limited and temporary basis. (See Tex. Gov. Code Secs. 27.052 and 27.054). Given what is being contemplated, we do not see any authorization for one justice of the peace to hear failure to attend school cases on an exclusive basis. Even if other justices are unwilling to hear the cases in their own precincts, one justice court cannot do the work of the others except as previously stated. In addition, such arrangement would be between the courts and not between a court and a school district. (See Tex. Gov. Code Sec. 27.054).

The only statute that discusses transfers is Texas Family Code Section 54.921(a) in which the juvenile court, upon receiving a truancy case, waives its jurisdiction and transfers a case to the appropriate municipal or justice court. A waiver of jurisdiction by a juvenile court of all truancy cases is effective for one year. A complaint of truancy must then be filed in the municipal or justice court and proceed as set forth in Section 25.094 of the Texas Education Code.

A juvenile court cannot confer sole jurisdiction over truancy cases to one magistrate, either municipal or justice of the peace.

### Issue No. Two

May a Justice of the Peace receive a supplemental salary, stipend, payment, or any personal monetary benefit from a local school district for hearing truancy cases from the district?

The answer is **NO**.

The Texas Constitution requires that all Justices of the Peace must be paid on a salary basis. (Texas Constitution Article XVI, Section 61(b)). Prior to that mandate, precinct officers and other officials could collect fees of office for their duties, however, Article XVI was ratified to abolish the fee system of compensation in lieu of the officers' salaries.

I believe that the Canons of Judicial Ethics are violated anytime that a jurist receives any direct or indirect benefit from any litigant, participant or outside agency for deciding a case. It is illegal for a school district, who is the complainant in truancy / failure to attend school cases, to pay part of the salary of the court.

Issue No. Three

May a party or interested party to any case supply staff, facilities, or other tangible benefits to the county by providing staff or facilities to any court and specifically to Justice of the Peace courts?

The answer is NO.

Hidalgo County is solely responsible for providing, maintaining and staffing all courts in the county. Hidalgo County should not permit non-county personnel to staff a county court. A serious legal problem will be created, if it is established that unauthorized personnel are participating in court proceedings other than appearing as witnesses.

Summary

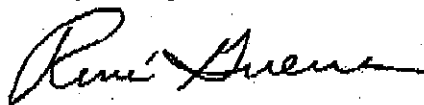
The integrity of Texas courts must remain inviolate.

Hidalgo County school districts must file cases as required by law with the juvenile court as a truancy case or with the appropriate municipal or justice of the peace court as failure to attend school. A justice of the peace court handling such cases may not divest itself of its responsibilities except in limited circumstances. A court receiving the assistance of staff, supplies and/or facilities from a school district compromises its integrity and impartiality. A court should not hold a hearing in the building of the complainant.

It is illegal for any court to receive any benefit other than those granted through authorized compensation. If Hidalgo County wants to enter into agreements with cities to use public facilities for these truancy proceedings, this would be more appropriate than using school district buildings.

It is unethical and may be illegal for school personnel assisting a court, to discuss, advise, or explain any aspect of the truancy case with the child or the parent(s) prior to or during the hearings on the case.

Respectfully submitted,



RENE GUERRA  
CRIMINAL DISTRICT ATTORNEY  
HIDALGO COUNTY, TEXAS

RG/erh