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September 13, 2024

The Honorable Ken Paxton  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

Dear Attorney General Paxton,

I am writing to formally request an opinion from the Office of the Attorney General regarding the specific judicial officer required by statute to conduct a hearing pursuant to Texas Code of Criminal Procedure Article 15.17. A local justice of the peace is wanting clarification.

Article 15.17 of the Texas Code of Criminal Procedure outlines the procedures for magistrates to follow when a person is arrested without a warrant. A critical component of this process is the hearing mandated by the statute. However, the statute is unclear as to which specific judicial officer is authorized or required to conduct this hearing.

Article 2.09 includes the following as magistrates:

Each of the following officers is a magistrate within the meaning of this Code: The justices of the Supreme Court, the judges of the Court of Criminal Appeals, the justices of the Courts of Appeals, the judges of the District Court, the magistrates appointed by the judges of the district courts of Bexar County, Dallas County, or Tarrant County that give preference to criminal cases, the criminal law hearing officers for Harris County appointed under Subchapter L, Chapter 54, Government Code,<sup>1</sup> the criminal law hearing officers for Cameron County appointed under Subchapter BB, Chapter 54, Government Code, the magistrates or associate judges appointed by the judges of the district courts of Lubbock County, Nolan County, or Webb County, the magistrates appointed by the judges of the criminal district courts of Dallas County or Tarrant County, the associate judges appointed by the judges of the district courts and the county courts at law that give preference to criminal cases in Jefferson County, the magistrates appointed by the judges of the district courts and statutory county courts in Denton County, the magistrates appointed by the judges of the district courts and statutory county courts in Grayson County, the associate judges appointed by the judges of the district courts and the statutory county courts of Brazos County, Nueces County, or Williamson County, the magistrates appointed by the judges of the district courts and statutory county courts that give preference to criminal cases in Travis County, the criminal magistrates appointed by the Brazoria County Commissioners Court, the criminal magistrates appointed by the Burnet County Commissioners Court, the magistrates appointed by the El Paso Council of Judges, the county judges, the judges of the county courts at law, judges of the county criminal courts, the judges of statutory probate courts, the associate judges appointed by the judges of the statutory probate courts under Chapter 54A, Government Code, the associate judges

appointed by the judge of a district court under Chapter 54A, Government Code, the magistrates appointed under Subchapter JJ, Chapter 54, Government Code, the magistrates appointed by the Collin County Commissioners Court, the magistrates appointed by the Fort Bend County Commissioners Court, the justices of the peace, and the mayors and recorders and the judges of the municipal courts of incorporated cities or towns.<sup>1</sup>

Article 15.17 states “some magistrate” “of the county”. The plain language would allow either a justice of the peace or a court that has general jurisdiction of the criminal offense. However, the jurisdiction has not vested with the criminal court (albeit county court, county court at law, or district court) because a pleading/charging instrument (presumably) has not been filed.<sup>2</sup>

Based on observation, it appears that justices of the peace customarily conduct the initial magistrating—and this is common practice throughout the State.

The basic inquest is I request that your office address the following questions:

- Which specific judicial officer is required by statute to conduct the Article 15.17 hearing?
- If both a justice of the peace and district court both assert a right to magistrate a defendant, is there any hierarchy to determine who is the proper magistrate?
- Are there any exceptions or circumstances under which a different judicial officer may conduct the hearing?

Is the magistrate limited by what subject matter jurisdiction has been bestowed upon it (i.e., misdemeanor or felony, etc.) by the Texas Legislature?<sup>3</sup>

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<sup>1</sup> Tex. Code Crim. Pro. art. 2.09.

<sup>2</sup> *Teal v. State*, 230 S.W.3d 172, 174-175 (Tex. Crim. App. 2007) (“[a]bsent an indictment or valid waiver, a district court does not have jurisdiction over [a] case.”).

<sup>3</sup> *Ex parte Clear*, 573 S.W.2d 224 (Tex. Crim. App. 1978).

The next question is whether the analysis would change if the State filed a charging instrument within 48 hours—but prior the defendant being taken before “some magistrate”. Finally, to the extent there is an overlap of power/duties for the purposes of Article 15.17, how are the responsibilities delegated? Is it by local rule ordered by the district courts, by agreements, an order by the commissioner’s court, or another mechanism?

A definitive opinion from your office clarifying which judicial officer is statutorily mandated to conduct the Article 15.17 hearing would provide much-needed guidance to law enforcement, magistrates, and the public.

Thank you for your prompt attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Jerry Rochelle". The signature is stylized with a large, looping initial "J" and a cursive "Rochelle".

Jerry Rochelle  
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Bowie County, Texas  
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