



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

CRAWFORD C. MARTIN
ATTORNEY GENERAL

January 27, 1971

Honorable Ned Granger
County Attorney
County Courthouse
Austin, Texas

Opinion No. M-776

Re: Does Article 45.36,
Vernon's Code of
Criminal Procedure,
require that the Jus-
tice of the Peace pre-
sent the State's case
in a non-jury crimi-
nal trial in the ab-
sence of the county
attorney?

Dear Mr. Granger:

Your recent letter to this office requests our opinion as to whether a Justice of the Peace, in view of Article 45.36 of Vernon's Code of Criminal Procedure, is required to present the State's case in a non-jury criminal trial in the absence of the county attorney or his assistant.

Our opinion is that the Justice of the Peace has no power or authority to present the State's case in a criminal trial in the absence of the county attorney or his assistant. Section 21 of Article V, Constitution of Texas, provides, in part, that,

". . . The County Attorneys shall represent the State in all cases in the District and inferior courts in their respective counties; but if any county shall be included in a district in which there shall be a District Attorney, the respective duties of District Attorneys and County Attorneys shall in such counties be regulated by the Legislature. . ."

Article 2.02, Vernon's Code of Criminal Procedure, likewise provides that,

"The county attorney shall attend the terms of court in his county below the grade of district court, and shall represent the State in all criminal cases under examination or prosecution in said county; . . ."

We find no authority in the statutes or the Constitution for the Justice of the Peace to present the State's case or represent either the State or the defendant under any circumstances.

Article 45.03, Vernon's Code of Criminal Procedure, reads,

"All prosecutions in a corporation court shall be conducted by the city attorney of such city, town or village, or by his deputy. The county attorney of the county in which said city, town or village is situated may, if he so desires, also represent the State in such prosecutions. In such cases, the said county attorney shall not be entitled to receive any fees or other compensation whatever for said services. The county attorney shall have no power to dismiss any prosecution pending in said court unless for reasons filed and approved by the recorder."

In view of this Article, those prosecutions originating in a corporation court, must be conducted by a city attorney or by his deputy or by the county attorney.

Article 30.01, Code of Criminal Procedure, provides that no Justice of the Peace shall sit in any case if he has ever been counsel for either the State or the accused; and Article 2378, Vernon's Civil Statutes, in prescribing disqualifications of the Justice of the Peace, declares that he shall not sit ". . . in a cause where he may be interested. . ." If the Justice of the Peace should attempt to present the case for the State or represent to any degree either party to the proceeding, he would thereby disqualify himself to sit as the judge in the case.

A trial judge may ask questions of a witness to enable him to make an intelligent ruling or to make clear certain features of the testimony; his authority, however, falls far short of "presentation of" the State's case. Texas Digest, Crim. Law 656, 656(2), 1166 1/2(12), and Witnesses 246.

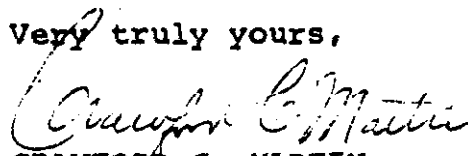
Therefore, considering all laws on the subject in par materia and harmonizing them, our opinion is that Article 45.36, Vernon's Code of Criminal Procedure, merely imposes upon the Justice of the Peace, in the interest of justice,

the duty to examine the witnesses if the State or the defendant is not represented by counsel. The statute does not imply that the Justice of the Peace shall have the authority to undertake the representation of the State's interest.

S U M M A R Y

Article 45.36, Vernon's Code of Criminal Procedure, does not authorize or require the Justice of the Peace to present the State's case or undertake the representation of the State's interest in any case before him.

Very truly yours,



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