



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

January 28, 1988

Honorable L. B. Kubiak  
Texas House of Representatives  
P. O. Box 2910  
Austin, Texas 78769

LO-88-11

Dear Representative Kubiak:

You have requested our emergency opinion on the construction of House Bill No. 975. Acts 1987, 70th Leg., ch. 943, at 6319. Because the matters about which you inquire raise serious questions regarding the jurisdiction of the Washington County Court over the past several months, we are answering your inquiry by letter opinion rather than by formal decision.

House Bill No. 975 reads in its entirety:

**SECTION 1. CREATION.** The County Court at Law of Washington County is created.

**SECTION 2. JURISDICTION.** (a) The county court at law has jurisdiction over all causes and proceedings, civil and criminal, juvenile and probate, original and appellate, prescribed by law for county courts. However, it does not have jurisdiction over causes and proceedings concerning roads, bridges, or public highways or the general administration of county business that is now within the jurisdiction of the Commissioners Court of Washington County. The county court at law has concurrent jurisdiction with the County Court of Washington County in all matters of probate.

(b) The county court at law has jurisdiction concurrent with the district court in eminent domain cases as provided by general law and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$50,000, exclusive of interest.

(c) The county court at law has concurrent civil jurisdiction with the district court in suits and causes involving family law matters, including adoptions, birth records; removal of disability of minority or coverture; change of names of persons; child welfare, custody, support and reciprocal support, dependency, neglect, or delinquency; paternity; termination of parental rights; divorce and marriage annulment, including the adjustment of property rights, custody and support of minor children involved therein, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; independent actions involving child support and custody of minors and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses.

(d) The county court at law has concurrent jurisdiction with the district court in appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy.

(e) The provisions in this section do not diminish the jurisdiction of the district court in Washington County, and the district court shall retain and continue to exercise the jurisdiction that is conferred by law on district courts.

(f) The county court at law or its judge has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, execution, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by general law. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges, except that

the judge of the county court at law does not have any authority over the administrative business of Washington County that is performed by the County judge.

(g) The County Court of Washington County shall have and retain, concurrently with the court created by this Act, the general jurisdiction of a probate court. The county court shall have no other jurisdiction, civil or criminal, original or appellate. All ex officio duties of the judge shall be exercised and retained by the judge of the County Court of Washington County, except as otherwise provided by law.

SECTION 3. TERMS. The county court at law shall hold four terms of court each year. The terms begin on the first Mondays in January, April, July, and October.

SECTION 4. JUDGE. (a) The judge of the county court at law must have been a bona fide resident of Washington County for at least two years prior to his appointment or election and must be a qualified voter in the county, at least 30 years of age, and a licensed attorney in this state who has been actively engaged in the practice of law for a period of five years prior to his appointment or election.

(b) The judge of the county court at law may not engage in the private practice of law after his appointment or election.

(c) The qualified voters of the county shall elect a judge of the county court at law for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(d) The commissioners court shall fill a vacancy occurring in the office of the judge of the county court at law, and the appointee holds office until the next general election and until his successor is elected and has qualified.

(e) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. The judge may be removed from office in the same manner and for the same causes as a county judge.

(f) The judge of the county court at law is entitled to receive an annual salary of not less than 65 percent of the amount appropriated by the state for the annual salary of each district judge. The salary shall be paid by the county treasurer by order of the commissioners court and shall be paid monthly in equal installments. The judge of the county court at law is entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner that is allowed the county judge. The judge of the county court at law shall assess the same fees that are prescribed by the law relating to the county judge's fees, which shall be collected by the clerk of the court and paid into the county treasury on collection. No part of the fees may be paid to the judge.

(g) A special judge of the county court at law with the same qualifications as the regular judge may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. If a judge of the county court at law is disqualified to try a case pending in that court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

SECTION 5. PERSONNEL. (a) The county attorney, county clerk, and sheriff of Washington County serve as county attorney, clerk, and sheriff respectively of the county court at law, except that the district clerk serves as clerk of the county court at law in the cases enumerated in Section 2(c) of this Act. These officials, either personally or by the appointment of a deputy or assistant,

shall perform the duties and responsibilities of their offices and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the county court at law shall appoint an official court reporter who has the qualifications and duties provided by law and who serves at the pleasure of the judge of the county court at law. The official court reporter is entitled to the compensation set by the Commissioners Court of Washington County. The judge of the county court at law may, in lieu of appointing an official court reporter, contract for the services of a court reporter under guidelines to be established by the commissioners court.

SECTION 6. PRACTICE AND PROCEDURE.

(a) Practice in the county court at law must conform to that prescribed by general law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving those matters of concurrent jurisdiction with the district courts shall be governed by the laws and rules pertaining to district courts, general or special, as well as county courts. If a case that is not included in the jurisdiction enumerated in Section 2(a) of this Act is tried before a jury, the jury shall be composed of 12 members.

(b) The laws that govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(c) Jurors regularly impaneled for a week by the district court or courts may, on request of the judge of the county court at law, be made available and shall serve for the week in the county court at law.

SECTION 7. COURTROOM. The commissioners court shall furnish and equip a suitable courtroom and office space for the court created by this Act.

SECTION 8. SEAL. The seal of the court created by this Act shall be the same as that provided by law for county courts, except the seal shall contain the words 'County Court at Law of Washington County.'

SECTION 9. APPEAL. (a) Appeals in civil and criminal cases from judgments and orders of the county court at law shall be to the court of appeals as provided for appeals from district and county courts.

(b) All cases appealed from the justice courts and other inferior courts in Washington County shall be made to the county court at law, unless otherwise provided by law.

SECTION 10. CONFORMING AMENDMENT. Section 26.339, Government Code, is amended to read as follows:

Sec. 26.339. WASHINGTON COUNTY. The County Court of Washington County has the general jurisdiction of a probate court but has no other civil or criminal jurisdiction.

SECTION 11. INITIAL TRANSFER OF CASES. As soon as practicable following the effective date of this Act, the county clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the County Court of Washington County. All pending civil and criminal cases in the county court are transferred to the county court at law. The district clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the district courts in Washington County and may transfer a sufficient number of those matters to the docket of the court created by this Act to equalize the dockets. Equilization of case load shall be the primary objective in

establishing the initial case docket for the county court at law.

**SECTION 12. INITIAL APPOINTMENT OF JUDGE.** The commissioners court shall appoint a person to fill the vacancy existing on creation of the office of judge as provided by Section 4(d) of this Act. The appointee must have the qualifications required of the regular judge.

**SECTION 13. CREATION OF COURT.** The County Court at Law of Washington County is created January 1, 1989, or on an earlier date determined by the commissioners court by an order entered on its minutes.

**SECTION 14. EMERGENCY.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The problem which arises results from the fact that the bill itself became effective on August 31, 1987, while the new county court at law is not created until a later time. Since the bill became effective on August 31, 1987, section 10 thereof was in effect as of that date. Section 10 removes all jurisdiction of the county court excepting probate jurisdiction. Thus, it can be argued that section 10, standing alone, creates a gap in which no county-level court to handle nonprobate matters has existed in Washington County since August 31, 1987.

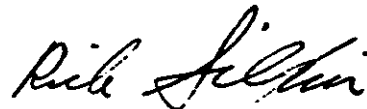
In our opinion, however, section 10 should not be read alone. Sections 2(g) and 11 of the bill indicate a legislative intent that the two events -- creation of the county court at law and abolition of the nonprobate jurisdiction of the county court -- should occur simultaneously. Furthermore, section 13 of the original bill, as introduced, provided for an effective date of September 1, 1987, so that the county court at law would have been created on that date. When the committee substitute was offered, section 13 was changed from an effective date provision to that which presently exists. The "summary of committee action" in the bill analysis does not indicate

that any thought was given to the creation of a potential 16-month gap in county court jurisdiction. We must infer from the failure of the bill analysis to include any reference to this gap that the legislature, in amending the bill to postpone creation of the county court at law, simply neglected to amend that portion abolishing most of the county court's jurisdiction.

Finally, section 1 states that "the county court at law of Washington County is created." Clearly in order to harmonize this provision with section 13, the real "effective date" of House Bill No. 975 should be the date on which the new court is created. Such construction conforms to the elimination of the effective date provision from section 13 of the original bill.

From this perspective, we believe it is evident that the legislative intent in House Bill No. 975 was simultaneously to create the county court at law of Washington County and to abolish the nonprobate jurisdiction of the county court. Since we are obliged to conform to the intent of the legislature in construing a statute, our conclusion must be that section 10 of House Bill No. 975 becomes effective simultaneously with the creation of the county court at law of Washington County.

Very truly yours,



Rick Gilpin, Chairman  
Opinion Committee

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