



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 21, 1997

The Honorable Sherry L. Robinson  
Waller County Criminal District Attorney  
836 Austin Street, Suite 103  
Hempstead, Texas 77445

Letter Opinion No. 97-054

Re: Whether county judge may delegate duty to  
hear applications for liquor licenses under chapter  
61 of the Alcoholic Beverage Code to judge of  
county court at law (ID# 39389)

Dear Ms. Robinson:

You ask whether the County Judge of Waller County may delegate his duty to hear license applications under chapter 61 of the Alcoholic Beverage Code to the judge of the Waller County Court at Law pursuant to section 61.312 of the code. In our view, he may not.

As you explain the facts, the county judge has heard such applications without a court reporter, a fact which recently became an issue in the appeal of the denial of such an application. He wishes to delegate this duty to the judge of the county court at law so that such hearings can be recorded by her court reporter, and believes it would be possible to do so under the authority of section 61.312 of the Alcoholic Beverage Code. Section 61.312(a) reads: "A county judge may file an order with the commissioners court of the county delegating to another county officer the duty to hear applications under this chapter."

You note that Government Code section 25.2392(a) grants the Waller County Court at Law, *inter alia*, "the jurisdiction provided by Section 25.0003 [of the Government Code] and other law," and ask whether section 61.312(a) would constitute a jurisdictional grant by "other law." Because the duties proposed to be delegated by section 61.312(a) are administrative rather than judicial, it would not.

It is well settled that, in hearing license applications under chapter 61 of the Alcoholic Beverage Code, a county judge is acting in an administrative, rather than a judicial, capacity. *Morton v. Plummer*, 334 S.W.2d 322, 324 (Tex. Civ. App.--Austin 1960, no writ); *Texas Liquor Control Bd. v. Spivey*, 354 S.W.2d 424, 425 (Tex. Civ. App.--Dallas 1962, no writ); *Texas Liquor Control Bd. v. Warren*, 360 S.W.2d 821, 822 (Tex. Civ. App.--Dallas 1962, no writ); *Padgett v. Griffin*, 367 S.W.2d 222, 224 (Tex. Civ. App.--Waco 1963, writ ref'd); *Stone v. Texas Liquor Control Bd.*, 417 S.W.2d 385 (Tex. 1967); *Four Stars Food Mart, Inc. v. Texas Alcoholic Bev. Comm'n*, 923 S.W.2d 266, 269 (Tex. App.--Fort Worth 1996, no writ).

The Government Code expressly bars county court at law judges from engaging in the county's administrative business. In section 25.0003(b), the court is held not to "have jurisdiction

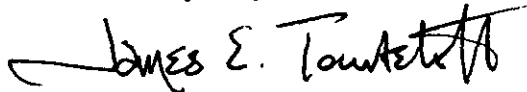
over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business that is within the jurisdiction of the commissioners court of each county." Section 25.0004(d) provides, "[t]he judge of a statutory county court has no authority over the county's administrative business that is performed by the county judge."

Since the judge of a county court at law has no authority over administrative business such as the license application process at issue here, we do not construe section 61.312(a) of the Alcoholic Beverage Code as a jurisdictional grant. The county court at law judge is not, for this purpose, "another county officer" to whom the county judge may delegate the duty of hearing license applications under chapter 61 of the Alcoholic Beverage Code.

### S U M M A R Y

For the purposes of section 61.312 of the Alcoholic Beverage Code, the County Court at Law Judge of Waller County is not "another county officer" to whom the county judge may delegate the duty of hearing license applications under chapter 61 of that code.

Yours very truly,

A handwritten signature in black ink, appearing to read "James E. Tourtelott". The signature is fluid and cursive, with a long horizontal stroke at the end.

James E. Tourtelott  
Assistant Attorney General  
Opinion Committee