



RQ-0258-JC

TARRANT COUNTY

OFFICE OF THE
CRIMINAL DISTRICT ATTORNEY

TIM CURRY
CRIMINAL DISTRICT ATTORNEY
817/884-1400

JUSTICE CENTER
401 W. BELKNAP
FORT WORTH, TX 76196-0201

July 12, 2000

The Honorable John Cornyn
Attorney General for Texas
P. O. Box 12548
Austin, Texas 78711-2548

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OPINION COMMITTEE

FILE # ML-41511-06
I.D. # 41511

Re: Opinion Request

Dear Mr. Cornyn:

I am requesting an Attorney General Opinion pursuant to *Government Code § 402.043* titled "Questions Relating To Actions In Which The State is Interested." The subject matter upon which I seek an Opinion pertains to the granting of an expunction pursuant to the requirements of Article 55.01 of the Code of Criminal Procedure. The expunction in question is currently pending in the 396th Judicial District Court of Tarrant County.

I will summarize the facts and they are addressed in the accompanying brief.

On February 24, 1998 Earnest Knight was arrested for Aggravated Assault. On February 27, 1998 my office filed a Class A Misdemeanor Assault charge against Knight. His case was assigned to County Criminal Court No. 2 of Tarrant County. On September 11, 1998, pursuant to a plea bargain, Knight pled guilty to the lesser Class C offense of Assault By Threat. Knight was fined \$500.00 and assessed court costs in the amount of \$121.25. He was placed on 180 days Deferred Adjudication Probation Pro Forma. On March 16, 1999 after successfully completing the period of probation, Knight was dismissed from probation.

On February 9, 2000 Knight filed for an expunction of these records and his petition was assigned to the 396th Judicial District Court under cause number E-396-2105. Knight's petition relies on Articles 45.051(e) and 55.01 of the Code of Criminal Procedure. My office filed an objection to this expunction on March 13, 2000. This matter

was set for a hearing on July 7, 2000. On July 5, 2000 the attorney for the Petitioner obtained a *nunc pro tunc order* from the Judge of County Criminal Court No. 2 changing the docket sheet to reflect that Knight's probation was pursuant to Article 45.54 of the Code of Criminal Procedure.

My office does not believe Knight is entitled to an expunction of these records. The purpose of the expunction statutes are to allow persons who have been *wrongfully arrested* to have those records expunged. While we develop this more in the attached brief, it is difficult to see how an individual who pleads guilty to a lesser offense, albeit a Class C misdemeanor, would be entitled to an expunction.

My office has experienced a significant increase in expunction petitions and I am sure that other prosecution offices find themselves in a similar situation. We are getting more and more petitions where the defendant has pled guilty to a Class C Misdemeanor (usually Assault By Threat, Theft Under \$50.00, Theft Under \$20.00 by Check, etc.) and then the defendants turn around and seek to have these records expunged. Defense attorneys are requesting expunctions under the provisions of Chapter 45 of the Code of Criminal Procedure. Our position, which is set forth in the attached brief, is that proceedings under Chapter 45 refer only to those cases which *originate* in either Justice or Municipal Courts.

I would appreciate a review of this situation by your office. Our Memorandum of Law is enclosed.

Thank you very much for your assistance in this matter.

Sincerely yours,



TIM CURRY
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TC/

Certified Mail Z 137 013 539

Return Receipt Requested