

160 Years of Precedent Supporting the *Stephens* Decision

Case Law:

- **1859:** It's "the duty of the [DA] to . . . 'conduct all prosecutions for crimes and offenses.'" *State v. Southern Pacific R.R. Co.*, 24 Tex. 80, 117 (1859) (ultimately holding that it is the DA's and not the AG's duty to represent the State in the trial court).
- **1868:** The DA is "the officer appointed by the state authorities to conduct its causes [and is therefore] the one, and the only one, who can assume the power to dismiss a criminal cause." *State v. McClane*, 31 Tex. 260, 261 (1868).
- **1876:** In a criminal prosecution, the State "speaks and acts through its appropriate [DA].... This power is embraced in the authority expressly conferred on him 'to conduct all prosecutions for crimes and offenses cognizable in [the trial courts].'" *Davis v. State*, 44 Tex. 523, 524 (1876).
- **1882:** "[U]nder all the constitutions of this state, none of which defined the duties of the attorney general or of district or county attorneys so specifically as does the present [Constitution], it will be seen that it was always contemplated that the district attorneys should represent the state in all cases in the district and inferior courts, except certain actions which were [expressly] designated" by the Constitution itself. *State v. Moore*, 57 Tex. 307, 316 (1882) (ultimately holding that it was the right and duty of the county attorney to represent the State in cases at issue in the trial courts to the exclusion of the AG).
- **1905:** "The main purpose of section 21 of article 5 being manifestly to make it the duty of the county attorney or district attorney, as the case might be, to prosecute the pleas of the state, it may be gravely doubted whether it was within the power of the Legislature to deprive them of that function, by conferring it in whole or in part upon another officer." *Brady v. Brooks*, 89 S.W. 1052, 1057 (Tex. 1905).
- **1918:** The Constitution "lodges with the county [and district] attorneys the duty of representing the State in all cases in the district and inferior courts," and gives the "duty as to suits and pleas in the Supreme Court . . . to the Attorney General." *Maud v. Terrell*, 200 S.W. 375, 376 (Tex. 1918) (concluding that "the powers thus conferred by the Constitution upon these officials are exclusive.").
- **1955:** Recognizing that the Constitution gives to county attorneys and DAs the duty to represent the State in the trial courts. *Garcia v. Laughlin*, 285 S.W.2d 191, 195 (Tex. 1955).
- **1957:** "It has always been the principal duty of the district and county attorneys to investigate and prosecute the violation of all criminal laws, including the election laws, and these duties cannot be taken away from them by the Legislature and given to others. If [] the Election Code should be construed as giving such powers exclusively to the Attorney General, then it would run afoul of [the Texas Constitution.]" *Shepperd v. Alaniz*, 303 S.W.2d 846 (Tex. Civ. App.—San Antonio 1957, no writ).
- **1987:** "[U]nder the separation of powers doctrine, the Legislature may not remove or abridge a district or county attorney's exclusive prosecutorial function, unless authorized by an express constitutional provision." *Meshell v. State*, 739 S.W.2d 246, 254-55 (Tex. Crim. App. 1987).
- **1994:** "Under our state law, only county and district attorneys may represent the state in criminal prosecutions . . . The Attorney General, on the other hand, has no criminal

prosecution authority. Rather, he is generally limited to representing the State in civil litigation.” *State ex rel. Hill v. Pirtle*, 887 S.W.2d 921, 930 (Tex. Crim App. 1994).

- **2002:** “The office of the attorney general of Texas has never had authority to initiate a criminal prosecution.” *Saldano v. State*, 70 S.W.3d 873, 878 (Tex. Crim. App. 2002).
- **2013:** “[Th]e attorney general is, with a few exceptions in Texas trial courts, not authorized to represent the State in criminal cases.” *Ex parte Lo*, 424 S.W.3d 10, 30 n.2 (Tex. Crim. App. 2013) (citing to various statutory provisions which limit the AG’s role in criminal cases only upon request by the DA for assistance).
- **2020:** “[T]he State correctly observes that the Attorney General cannot bring . . . a criminal prosecution without the participation of a district attorney.” *In re Abbott*, 601 S.W.3d 802, 812 (Tex. 2020).

Statutes:

- “Each district attorney shall represent the State in all criminal cases in the district courts of his district and in appeals therefrom.” TEX. CODE CRIM PRO. Art. 2.01.
- For over 100 counties, the Texas Legislature has enacted statutes providing that the district and county attorneys have the right to control all criminal prosecutions in the trial courts of their counties. *See* TEX. GOVT. CODE Ch. 44.
- Thirty-five other statutes, many covering multiple counties, provide that the DA represents the State in all criminal matters. *See* TEX. GOVT. CODE Ch. 43.
- Several statutes covering various counties specify that the county attorney represents the State in all matters in the district court (which would include all criminal prosecutions). *See* TEX. GOVT. CODE Ch. 45.

Attorney General Opinions:

- **1981:** “Texas law places the responsibility for representing the state in prosecutions of criminal cases in the district and inferior courts in the hands of county and district attorneys.” (citing TEX. CONST. art. V, § 21). “Our courts have held that officers who are responsible for representing the state in court may ... be assisted ... providing that such assistance is rendered in a subordinate capacity and the officer remains in control of the litigation.” AG Op. No. MW-340 (Mark White).
- **1987:** “[I]t has been held that: ‘It has always been the principal duty of the district and county attorneys to investigate and prosecute the violation of all criminal laws, including the election laws, and these duties cannot be taken away from them by the Legislature and given to others.’” AG Op. JM-661 (Jim Mattox).
- **2002:** The Department of Agriculture has no “authority, express or implicit, to prosecute a criminal action or to investigate an alleged violation” because “the Texas Constitution places the authority to prosecute with county, district, and criminal district attorneys.” The opinion also noted that a “county or criminal district attorney may request the attorney general’s assistance in prosecution.” AG Op. JC-0539 (John Cornyn)
- **2010 & 2012:** “A district attorney’s prosecutorial determination regarding the initiation of criminal proceedings is within the prosecutor’s substantial discretion.” AG Op. GA-0765, GA-0967 (Greg Abbott)