

OFFICE OF THE ATTORNEY GENERAL



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NOV 21 1979

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Honorable S. Sanford Holliday
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A prosecution for forgery in
the third degree should be
brought in the county where
the forgery took place.

Dear Mr. Holliday:

Your October 17, 1979, letter requested our informal
opinion in answer to the following question:

"Where a party forges the signature
of the natural father of a child to a
consent to adoption form in Randolph
County and then files the form in an
adoption proceeding in Clay County,
in which county should the prosecution
be brought?"

In the opinion of this office the prosecution should be brought
in Randolph County.

The facts you give us indicate that the false writing
was done in Randolph County. What occurred in Clay County
was the uttering of the false writing. See Espalla v. State,

108 Ala. 38, 19 So. 82 (1895) and Terry v. State, 29 Ala. App. 340, 197 So. 44 (1940); cert. den. 240 Ala. 51, 197 So. 46. If we were concerned here with forgery in the first or second degree, it would be obvious that the prosecution could be brought in Randolph or Clay County. This is because the two higher degrees of forgery cover both making and uttering a false instrument. See Sections 13-4-60 and 13-4-61 Code of Alabama, 1975. In the case of these degrees of forgery, the making of a false writing in one county and the uttering of it in another county would present a classic example of an offense ". . . committed partly in one county and partly in another. . .," and in such cases ". . . venue is in either county." Section 15-2-6 Code of Alabama, 1975.

However, the forgery of a consent to adoption does not fall within the category of forgery in the first or second degree. This puts it under the catch-all, forgery in the third degree:

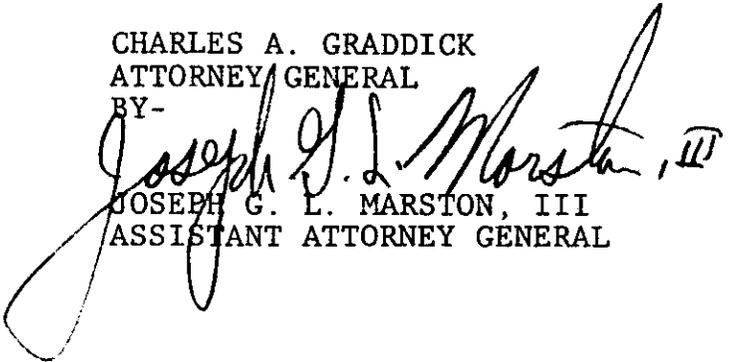
"§13-4-66. Forgery in the third degree.

"Any forgery which, under the provisions of this article, does not amount to forgery in the first or second degree must be adjudged forgery in the third degree." (Code of Alabama, 1975)

Notice that while the above-quoted statute defines as forgery in the third degree the making of certain false writings, no mention is made of uttering such false writings. Since forgery and uttering were separate offenses at Common Law, it must be concluded that no provision covers the uttering of a forged consent to adoption form. This means that the entire offense of forgery in the third degree took place in Randolph County, and there lies the venue.

Very truly yours,

CHARLES A. GRADDICK
ATTORNEY GENERAL
BY-


JOSEPH G. L. MARSTON, III
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JGLM:dpr