

February 27, 1939

Honorable Joe P. Flack  
County Attorney  
Menard, Texas

Dear Sir:

Opinion No. O-164  
Re: Must stamp be affixed to  
deed of trust refinancing  
pre-existing indebtedness.

We are in receipt of your letter of February 22, 1939, outlining the following facts:

In 1927, a person acquired 9,000 acres of land, executing vendor's lien notes for a part of the purchase price. Now, the debtor is borrowing money from third parties with which to pay off the vendor's lien notes, and has executed deeds of trust to secure such third parties in the payment of the indebtedness, which is renewed and extended by new notes payable to such third parties. Agreements have been executed showing the payment of the old obligation with the money so borrowed from said third parties and subrogating the latter to the liens of the original vendor of the land.

You ask our opinion as to whether the deeds of trust recently so executed must be stamped under Article 7047e, Revised Statutes, which reads in part as follows:

"(a) Except as herein otherwise provided, there is hereby levied and assessed a tax of ten cents (10¢) on each one hundred dollars (\$100) or fraction thereof, over the first two hundred dollars (\$200), on all notes and obligations secured by chattel mortgage, deed of trust, mechanic's lien contract, vendor's lien, conditional sales contract and all instruments of a similar nature which are filed or recorded in the office of the County Clerk under the registration Laws of this State; providing that no tax shall be levied on instruments for an amount

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of two hundred dollars (\$200) or less. After the effective date of this Act, except as hereinafter provided, no instrument creating a lien of any character to secure the payment of money, or reserving title to any property until the purchase price thereof shall have been paid, shall be filed or recorded by the County Clerk in this State until there has been affixed to such instrument stamps in accordance with the provisions of this Section; and providing further that the provisions of this Section shall not apply to renewals or extensions of any notes or obligations, and specifically shall not apply to refunding of existing bonds or obligations..." (Underscoring ours)

The situation which your outline falls squarely within the exception provided in the last quoted sentence of the above Act, and which we have underlined.

Such deeds of trust are not required to bear the stamps, and your question is, therefore, given a negative answer.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Glenn R. Lewis  
Assistant

GRL:N

APPROVED:

ATTORNEY GENERAL OF TEXAS