



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable L. R. Thompson
County Auditor
Taylor County
Abilene, Texas

Dear Sir:

Opinion No. 0-1815
Re: Deputy district clerk cannot be appointed for sole purpose of taking acknowledgements.

This will acknowledge receipt of your letter of January 3, 1940, in which you submit for an opinion of this department the question hereinafter stated. We deem it essential to quote the pertinent parts of your inquiry as follows:

"The directors of the local Rural Electrification Administration, (Taylor County), have asked the District Clerk of this County to request the Commissioners' Court to authorize him to appoint a deputy to take acknowledgements on easements to be secured from farmers throughout the County.

"Please let me have an opinion on the following question:

"Does the District Clerk have authority to make such appointment?"

Article 3902, Revised Civil Statutes of Texas, 1925, provides in part:

"Whenever any district, county or precinct officer shall require the services of deputies, assistants or clerks in the performance of his duties he shall apply to the County Commissioners' Court of his county for authority to appoint such

Honorable L. R. Thompson, Page 2

deputies, assistants or clerks, stating by sworn application the number needed, the position to be filled and the amount to be paid. . . ."

Thus it is seen that there is specific provision made for the appointment of deputies whenever it is made to appear that such officers "shall require the services of deputies, assistants or clerks in the performance of his duties." It is necessary therefore, to ascertain whether or not the taking of acknowledgements, under the circumstances stated in your letter, is a duty imposed by law upon the district clerk.

In the absence of sufficient facts appearing in your letter, we must necessarily predicate this opinion upon the assumption that the deputy proposed to be appointed is to be named solely for the purpose of taking acknowledgements from farmers from whom easements are to be obtained, and that such acknowledgements are to be taken outside the office of the district clerk.

It was held by the Supreme Court of Texas, in the case of Thompson v. Johnson et al, 19 S. W. 784, that a deputy district clerk could not be appointed for the sole purpose of taking acknowledgements. The court says:

" . . . The law makes no provision for the appointment of a special deputy district clerk, but for a deputy or deputies; and when an appointment is made by the clerk he cannot restrict the authority to one act, but it is good for all purposes. . . ."

We fail to find any duty imposed upon a district clerk to send a deputy district clerk outside the office to take acknowledgements. If there is no such duty imposed, and the taking of acknowledgements is the only duty which the clerk proposes to assign to such deputy, then the district clerk has not brought himself within the terms of Article 3902, supra, by showing that the appointment of a deputy is required for the "performance of his duties."

Honorable L. R. Thompson, Page 3

It is our opinion, therefore, that a deputy district clerk cannot be appointed solely for the purpose of taking acknowledgements under the circumstances stated by you.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Lloyd Armstrong*
Lloyd Armstrong
Assistant

APPROVED JAN 22, 1940

LA:LM

H. F. Moore
ASSISTANT
ATTORNEY GENERAL

APPROVED
OPINION
COMMITTEE
BY *Butts*
CHAIRMAN