0-3595

# OFFICE OF THE ATTORNEY GENERAL OF TEXAS

## AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Stansell Bryan
District Attorney
Waco, Texas

Dear Sir:

Attention: Mr. Roy Rutland, Jr.

Opinion No. O-3595
Re: Is the county clerk authorized to accept an instrument for record in case the notary public has failed to stamp or print his name under his signature as required by H. B. 389, Acts of the 47th Legislature?

Your recent request for an opinion of this Department on the above stated question has been received.

We quote from your letter as follows:

"Mr. Floyd Mitchell, the County Clerk of McLennan County, has requested an opinion from your office pertaining to House Bill Number 389, which is an act amending Article 5954 of the R. C. S. of Texas. Said act requires that Notaries Public shall print or stamp their names under their signatures on all written instruments and etc.

"The County Clerk desires an opinion as to whether or not he is authorized to accept an instrument for record in case the Notary Public has failed to stamp or print his name under his signature."

NO COMMUNICATION IS TO BE CONSTRUED AS A DEPARTMENTAL OPINION UNLESS APPROVED BY THE ATTORNEY GENERAL OR FIRST ASSISTANT

Section 1 of House Bill No. 389, Acts of the 47th Legislature, reads in part as follows:

"Notaries Public shall have the same authority to take acknowledgments or proofs of written instruments, protests instruments permitted by law to be protested, administer oaths, and take depositions, as is now or may hereafter be conferred by law upon County Clerks, and provided further that all Notaries Public shall print or stamp their names under their signatures on all such written instruments, protests instruments, oaths, or depositions; provided that failure to so print or stamp their names under their signatures shall not invalidate such acknowledgment."

By virtue of Section 20, Article V of the State Constitution, Articles 1941 and 6591, Vernon's Annotated Civil Statutes, county clerks are made the recorders of their respective counties. Article 6592, Vernon's Annotated Civil Statutes, provides that the seal of the county court shall be the seal of the recorder, and shall be used to authenticate all his official acts.

The duties of the recorder are ministerial. (First National Bank v. McElroy, 112 S. W. 801) The statutes ( Articles 1941 and 6591, Vernon's Annotated Civil Statutes) provide that each recorder shall record all instruments of writing authorized or required to be recorded in his office without delay, and in the order in which they have been deposited. It is the duty of the clerk to see that instruments presented for record are properly acknowledged or proved for record, and to record all instruments so acknowledged or proved which are entitled to be recorded in his office and are presented to him for that purpose. He may be compelled by mandamus to record such an instrument. (Hollis v. Pikland Corp., 40 S. W. (2d) 53; Texas Jurisprudence, Vol. 36, page 418).

Upon presentation of an instrument for record, the clerk must see that it is properly acknowledged; and where the instrument has been recorded it will be presumed, prima facie, that he did his duty in this respect and that the writing was so acknowledged as properly to authorize its registration. Texas Jurisprudence, Vol. 36, page 440.

It will be noted that House Bill No. 389, supra, specifically provides that failure to print or stamp the name of the notary public under his signature shall not invalidate such acknowledgment. As above stated, the duties of the recorder are ministerial, and it is his further duty to see that instruments presented for record are properly acknowledged or proved for record, and to record all instruments so acknowledged which are entitled to be recorded in his office and are presented to him for that purpose.

Therefore, in view of the foregoing authorities, we respectfully answer the above stated question in the affirmative.

Trusting that the foregoing fully answers your inquiry, we are

APPROVED JUN 6, 1941

FIRST ASSISTANT
ATTORNEY GENERAL

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Ardell Williams

Ardell Williams
Assistant

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