



THE ATTORNEY GENERAL  
OF TEXAS

Gerald C. Mann  
Attorney General

Honorable John R. Shook  
Criminal District Attorney  
San Antonio, Texas

Dear Sir:

Attention: Abe San Miguel

Opinion No. 0-3827

Re: Duty of the county clerk  
with reference to accept-  
ing and recording deeds  
with certain restrictive  
clauses.

We quote as follows from your recent letter request-  
ing a legal opinion from this department:

"The Consul General of Mexico has asked us  
to secure an opinion from you concerning the legal-  
ity of restrictive clauses contained in deeds where-  
by the sale of real estate in the State of Texas to  
Mexicans and the possession thereof by Mexicans are  
prohibited.

"\* \* \* .

"If such a clause as quoted above is illegal  
in being contrary to public policy, would the Coun-  
ty Clerk be justified in refusing to records an in-  
strument containing such a restriction?"

We have concluded that it would be improper for this  
department to write upon the first question involving the legal-  
ity of certain restrictive clauses in deeds. This matter is  
peculiarly one of private rights. We have consistently deemed  
it our duty, under the statutes, to refrain from writing upon  
such questions.

This is accentuated by the necessary answer to your  
second question. It is the duty of the county clerk to record

such deeds irrespective of the legality or illegality of the restrictive clauses mentioned.

It is well settled that it is the duty of the county clerk to accept for recordation onstruments delivered to him for such purpose which have been acknowledged or approved according to law. Articles 6626 and 6631; 36 Tex. Jur. 417. It was early declared in the case of Brockenbourough v. Melton, 55 Tex. 493, that:

"The clerk of the county court was required to record all instruments of writing authorized and required to be recorded."

In First National Bank v. McElroy, 112 S. W. 801, 804, the court declared that:

"The duties of a recording officer are ministerial."

The county clerk may be compelled by mandamus to record such instruments. In Hollis v. Parkland Corp., 40 S.W. (2d) 53, this was done, the Commission of Appeals pointing out:

"The plat appears to be duly acknowledged as required by law, and bears the approval of the city planning commissioner. This is all that the Act calls for as a prerequisite to the recording of the plat in the office of the county clerk. \* \* \*."

Moreover the clerk is liable for a penalty or for damages if he fails to preform his statutory duties with respect to the recording of instruments delivered to him for such purpose. See Article 6652; Carlisle and Co. v. King, 133 S. W. 241; 36 Tex. Jur. 426, Para. 24.

It is therefore the duty of the county clerk to accept deeds for recordation containing the restrictive clauses described in your letter notwithstanding any questions which might arise ap-  
pertaining to their legality.

Yours very truly

Approved Aug. 15, 1941  
/s/ Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS  
ZCS:RS

ATTORNEY GENERAL OF TEXAS  
By /s/ Zollie C. Steakley  
Zollie C. Steakley  
Assistant

Approved:Opinion Committee  
By: BWB, Chairman