



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

GERALD C. MANN  
~~XXXXXXXXXXXXXX~~  
ATTORNEY GENERAL

Honorable Melvin Combs  
Criminal District Attorney  
Beaumont, Texas

Dear Sir:

Opinion No. 0-4622

Re: Should the County Clerk  
refuse to accept for record any  
affidavit that does not carry  
both a jurat and an acknowledg-  
ment.

Your letter of May 27, 1942 submitting the above question has  
been given our careful consideration.

As you state, Article 6626, Revised Civil Statutes reads:

"The following instruments of writing, which shall have  
been acknowledged or proved according to law, are  
authorized to be recorded."

It then names the various instruments.

Article 6591 of the Revised Civil Statutes reads:

"County Clerks shall be recorders for their respective  
counties; \* \* \* \* shall record all instruments of writing  
authorized or required to be recorded."

Article 1941 of the Revised Civil Statutes relates to the duties  
of County Clerks and states:

"They shall be ex-officio recorders for their several  
counties, and as such shall record in suitable books to  
be procured for that purpose all deeds, mortgages and  
other instruments required or permitted by law to be  
recorded."

In the case of Farmers Mutual Royalty Syndicate vs. Isaacks,  
138 S.W. (2) 228, the Court after discussing the effect of a  
recorded affidavit duly sworn to but not acknowledged which  
related to the sale of certain lands states:

"(1-3) The affidavit was not such an instrument as is authorized by Article 6626, Revised Civil Statutes to be placed of record in the clerk's office and, therefore, its record did not constitute constructive notice to defendant in error of the facts revealed by it."

The court then held in said case that since the purchaser of the land had notice of said affidavit being on record he was charged with actual notice of its contents, and that although the recording of the affidavit was not constructive notice it did effectively give the purchaser of the land actual notice of its contents.

36 Tex.Jur. 439 reads: "An instrument which is not acknowledged or proved for record as required by law is not entitled to be recorded."

Under the above statement of the law a long list of authorities are cited.

Article 6612, 6613, 6614 and 6615 of the Revised Civil Statutes provide the methods of how instruments may be proved in order to entitle same to be recorded when said instruments have not been acknowledged.

There is no provision in the statute which authorizes an unacknowledged affidavit to be recorded and as above stated the recording of such an affidavit is not constructive notice of its contents, although it would have the effect of giving actual notice if the parties at interest saw the recorded affidavit.

Under Article 6626 of Revised Civil Statutes the only instruments which are entitled to be recorded are those that have been either acknowledged as provided by Article 6603 of the Revised Civil Statutes or those proved under the provisions of Article 6612, 6613 and 6614 of the Revised Civil Statutes.

You ask whether an affidavit, in order to be recorded should have a jurat and also an acknowledgment. It takes the jurat to make the instrument an affidavit. Before the County Clerk can be required to record an affidavit it must be acknowledged.

Yours very truly

GWG:WBR/cge

ATTORNEY GENERAL OF TEXAS

APPROVED JUNE 16, 1942  
s/ Grover Sellers  
FIRST ASSISTANT  
ATTORNEY GENERAL

s/ George W. Barcus

By George W. Barcus  
Assistant

APPROVED OPINION COMMITTEE  
BY BWB, Chairman