O-5156

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable R. A. McElrath
County Auditor
Cooke County
Gainesville, Texas

Dear Sir:

Opinion No. O-5156
Re: Does House Bill No. 20, Acts of the 48th Legislature, Regular Session, 1943, make it mandatory upon counties to furnish a record book to be used by the district clerk for recording licenses issued to chiropractors?

Your letter of July 2, 1943, requesting the opinion of this department on the above question reads as follows:

"H. B. # 20, providing for the licensing of Chiropractors, was passed by the Forty-eighth Legislature. Among the provisions of said bill is one, a part of section 6, which reads as follows:

"---'Provided that all licenses shall be numbered, signed by the officers of the Board and attested by the Seal. A certified copy shall be filed with the District Clerk of the County in which the licensee resides and office is maintained.'---

"Your opinion is requested as to whether the above mentioned provision, or any other provision of the law, makes it mandatory upon counties to furnish a record book to be used by the District Clerk for recording licenses issued to chiropractors."

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

Section 6 of House Bill No. 20, supra, reads as follows:

> "All licenses under this Act shall expire on the thirty-first day of August of each year and shall be renewed then or thereafter by the Board, upon payment of renewal fee to be set annually by the Board of not more than Fifteen Dollars ($15), and the presentation of evidence satisfactory to said Board, that the said licensee ,in the year preceding the application for renewal, attended some Post Graduate course satisfactory to the Board and/or at least one four-day or more educational refresher course or institute as conducted by the Board under the rules of the Board and/or the Texas State Chiropractic Association Incorporated; provided that the Board may grant renewal license, but not consecutive renewal, upon a showing satisfactory to the Board that attendance upon said educational programs was unavoidably prevented; provided all licenses shall be numbered, signed by the officers of the Board and attested by the Seal. A certified copy shall be filed with the District Clerk of the county in which the licensee resides and office is maintained. Renewal fees shall be applied by the Board in the same manner and to the same purpose as provided for in Section 2 of this Act. However the Board may, in its discretion, waive or remit any part or all of such fees for any one year; provided that no discrimination in the collecting, waiving or remitting of same be made licensee under this Act."

It will be noted that the foregoing section of House Bill No. 20, supra, does not require licenses of chiropractors to be recorded in the office of the district clerk in which the licensee resides or maintains an office. House Bill No. 20, supra, does not require the recording of chiropractors' licenses in any instance but merely requires that a certified copy shall be filed with the district clerk of the county in which the licensee resides and office is maintained. Where the law authorizes or requires a party to file a paper, it simply means that he shall place it in the official custody of the officer.

In the case of Holman v. Chevaillier, 14 Tex. 399, it is stated:

> ". . . the filing, by the party, in our practice, consists simply in placing the paper in the hands of the clerk, to be preserved and kept by him in his official custody, as an archive or record, of which his office becomes thenceforward the only proper repository. Though the ancient mode of filing papers has gone into disuse, the phraseology of the ancient practice is retained, in the common expressions 'to file,' 'to put on file,' 'to take off the files,' &c., from 'filum' the thread, string, or wire used in ancient practice, for connecting the papers together. The term 'file' is also used to denote the paper placed with the Clerk, and assigned by the law to his official keeping. A file is a record of the Court. It is the duty of the Clerk, when a paper is thus placed in his custody, or 'filed' with him, to endorse upon it the date of its reception, and retain it in his office, subject to inspection by whomsoever it may concern; and that is what is meant by his 'filing' the paper. But where the law requires or authorizes a party to file it, it simply means that he shall place it in the official custody of the Clerk. That is all that is required of him; . . ." (Also see Texas Jurisprudence, Volume 36, page 49 and authorities cited.)

In answer to your question, you are respectfully advised that it is our opinion that the licenses of chiropractors are not required by law to be recorded. Therefore, it is not necessary for the county to purchase a record book for that purpose. The statute merely requires the licensee to file a certified copy of his license with the district clerk of the county in which the licensee resides and maintains an office.

APPROVED JUL 16, 1948

Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Ardell Williams

Ardell Williams
Assistant

AW:db

APPROVED
OPINION
COMMITTEE
BY BWB
CHAIRMAN