



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Mr. Sheppard:

Opinion No. 0-5648-A

Re: Necessity for a seal upon
Comptroller Representative's
certificates under Article 7065b-
24 Vernon's statutes.

Your letter requesting a supplemental opinion upon
our Opinion No. 0-5648 is as follows:

"On November 15, 1944, you advised me in
Opinion No. 0-5648, that Comptroller employees
and representatives designated by me to dis-
charge certain duties in connection with the
administration and enforcement of the motor
fuel tax law could legally administer oaths or
affirmations in connection with such duties
under authority granted by the Legislature in
Section 24, of the motor fuel tax act.

"The question now arises as to whether or
not the law requires that a seal be affixed to
or impressed upon each instrument subscribed
and sworn to before such representative to
validate it.

"Article 4344, Vernon's Annotated Civil
Statutes, reads as follows:

"Among other duties the Comptroller
shall: 1. Procure a seal with words
"Comptroller's Office, State of Texas"
engraved around the margin and a five-
pointed star in the center, which shall
be used as the seal of his office to
authenticate all his official acts, ex-
cept warrants drawn on the State Treas-
ury. * * *

"Will you please advise me whether or not the administering of an oath or affirmation as contemplated in your former opinion will require the impression of a seal on the instrument subscribed and sworn to before such Comptroller representative in order to make the oath or affirmation one that is legally administered in the manner required by law?"

The requirement of a seal to an officer's certificate to an affidavit or an acknowledgment is matter of statute. Thus, Article 6602 of the Revised Civil Statutes enumerates the officer authorized to make proof of instruments of writing for record. Article 6606 requires such officer to make "his official certificate signed by him and given under his seal of office." Again, by Section 18 of Article 23 of the Revised Civil Statutes, an affidavit is defined as meaning "a statement in writing of a fact or facts signed by the party making it, and sworn to before some officer authorized to administer oaths, and officially certified to by such officer under his seal of office.

Article 27 of the Revised Civil Statutes declares:

"Each commissioner and each commission and each board which is or may be created by laws of this State shall have authority to adopt a seal with which to attest its official documents, certificates, or any official written paper of any kind.
* * *

Specifically, the Comptroller of Public Accounts is required to "procure a seal with words 'Comptroller's Office, State of Texas' engraved around the margin, and a five-pointed star in the center, which shall be used as the seal of his office to authenticate all his official acts, except warrants drawn on the State Treasury."

The statutes prescribe the character of seals to be used by certain other officers.

It would appear that the necessity for the use of a seal by any officer, therefore, is purely one of statute, and, therefore, absent such a statutory requirement, an officer who is clothed with the power to give certificates of affidavit or acknowledgment may do so without a seal. This statement, of

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course, is subject to the requirement as to those instruments to be registered, such as deeds and the like.

The authorized representatives of the Comptroller with the powers vested in them, as shown in Section 24 of Article 7065b, Vernon's Civil Statutes, and quoted in our Opinion No. 0-3648, are not specifically required to attest their certificates with a seal, although they have specific authority to make such certificates.

It is, therefore, the opinion of this department that such representatives may make certificates to affidavits and acknowledgments over their own name and official status without the necessity for affixing any character of seal. Such certificate should be in the usual form used by Notaries Public, and signed in the individual name of the representative, followed by the official designation of "Authorized Representative of the Comptroller of Public Accounts of Texas."

It is further our opinion, however, that your appointment of such representative should be in your official capacity and attested by your official seal. This constitutes the source of his appointment and consequent power under the statute. This is the official act of the Comptroller which requires the statutory seal, whereas the act of the representative is in virtue of the statutory power of such representative in his own official right, such representative having taken the proscribed oath of office after his appointment.

Of course, your representatives have no power to make such certificates except in respect to the particular duties enjoined upon them by their appointment. We attach hereto copy of our recent Opinion No. 0-5906 emphasizing this limitation upon power. It will be noted that the statute of special authority of the individuals there named dealt specifically with the question of seals.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

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