



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable W. L. Edwards
County Attorney
Victoria County
Victoria, Texas

Dear Mr. Edwards:

Opinion No. 0-7532

Re: Necessity for the husband to
join his wife in executing
bond in her official capacity
as county clerk.

Your request for an opinion on the above titled subject matter is as follows:

"The County Clerk-elect of this County is a married woman living with her husband, who is willing to sign any and all official bonds, if his joinder is required. Your opinion is requested as to the necessity or propriety of his joinder in such official bonds.

"I have made a search of the decisions but have been unable to find any case directly in point. However, on Page 97, Section 81, Spear's Law of Marital Rights, 3rd Edition, he apparently concludes that it is not necessary for a husband to join his wife in making bonds executed by her in her official capacity."

In the opinion of this department, your questions should be answered to the effect that it is entirely unnecessary for the husband to join his wife in the execution of the bond by her.

The text cited by you says:

"There is nothing in our Constitution or Statutes which in any way prohibits women generally from holding any elective or appointive public office. * * *

"Since under the Constitution in Texas a married woman may hold office, she may of course do all things necessary or incident to the proper exercise of that right, such as making a bond. The general rule forbidding her to contract a liability would no more prevent her making a bond than it would deny her the right to make necessary bonds in the prosecution of suits permitted to her. In each instance the power is an incident to the right conferred, and is necessarily implied, if not expressly required, by the statute demanding bonds."

In 23 Tex. Jur., Page 216, Sec. 180, it is said:

"The wife's bonds executed in the course of legal proceedings to which she is a party, either civil or criminal, of course, binds her personally without regard to her husband's joinder, for this is an incident to her right to litigate or defend in court."

For this pronouncement several cases are cited.

The husband may, however, become surety for his wife upon such official bond and would be liable as such surety precisely as any other surety for any liability of the wife as principal thereon. He is not required to become such surety for she may furnish other sureties at her option.

APPROVED DEC 10 1946

Very truly yours

Howell

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By

Ocie Speer
Ocie Speer
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OS/LH

