



**THE ATTORNEY GENERAL
OF TEXAS**

**PRICE DANIEL
ATTORNEY GENERAL**

AUSTIN, TEXAS

November 22, 1949

Hon. R. V. Rayford
County Auditor
Rusk County
Henderson, Texas

Opinion No. V-951.

Re: Several questions relative to the functions of the County Clerk under H.B.588, 51st Leg., requiring premarital physical examinations.

Dear Sir:

Reference is made to your recent request which reads in part as follows:

"Our County Clerk, Roy B. Cole, has requested that I ask for an Opinion in regard to the new marriage law which was passed under H.B.588 of the 51st Legislature:

"Sec. 7: Before the County Clerk shall issue any marriage license he shall file in his office the certificates or alternate court order required by this Act, and, previous to the issuance of the license, he shall certify upon the reverse side of the said license, that all certificates, or the Court order required by this Act have been so received and filed. The statement of the County Clerk shall also show the dates of the examination of both parties to the marital contract unless same has been suspended by Court order.

"There is no State approved Laboratory in Rusk County. Therefore, the physicians have to take the blood and send it out of the County to be tested, which requires from 2 to 4 days to get a report back. What date shall the County Clerk put on his certificate? The Physician takes the blood and dates his certificate that date. The report is dated some two or three days later from the laboratory, and received by the Doctor probably 2 days later. Now should the Clerk use the physician's date, or should the Clerk's certificate

be dated the date the blood was taken in other words, or on the date the test was actually made?

"Sec. 10. Marriage licenses issued under the provisions of this Act shall become invalid and of no effect unless the marriage be solemnized within fifteen (15) days from the date of the examination, and no person authorized to solemnize marriages shall perform said marriage after the expiration of fifteen (15) days from the date of examination as disclosed by the County Clerk's certificate called for by Section 7 of this Act and if he does so, he shall be punished as provided for herein.

"In case the Clerk has returned and presented to him for filing a marriage license where the ceremony has been solemnized after the 15 day period, shall he file and record this license in the usual way, or what procedure shall he take in case one is presented for filing after the 15 day period has lapsed? Is it the duty of the Clerk to call attention to the fact that it has been solemnized after the 15 day period? If you recall, the marriage license itself provides for 60 days.

"Since there is no fee provided for the certificate which is now required to be attached to the license under this new law, will the Clerk be entitled to a 50¢ fee provided for in Art. 3930, which reads as follows: 'Each certificate to any fact or facts contained in the records of his office with certificate and seal, when not otherwise provided for ...\$.50.'

"Sec. 8: Any judge of a County or District Court within the County in which the license is to be issued is authorized and empowered, on joint application by both applicants for a marriage license, to waive the requirements as to medical examinations, laboratory tests and certificates and to order the County Clerk to issue the license, if the Judge is satisfied by proof that sufficient cause for such action exists and that the public health and welfare will not be injuriously affected thereby. The order of the Court shall be

filed by the County Clerk in lieu of the certificate form. All records connected therewith shall be held in absolute confidence and shall not be open to public inspection and the hearings on the application shall not be made public.

"Now, since these Court Orders and records are held confidentially and not open to the public, will it be necessary for the County Clerk to provide a special docket to enter these orders on, and a special minute to record the orders, which shall be withheld from public inspection?"

Section 1 of the Act provides:

"No marriage license shall be issued unless each applicant files with the county clerk a certificate from a duly qualified physician licensed to practice medicine and surgery in Texas, or in any state or in any territory of the United States where applicants may reside but who wish to marry in Texas. The certificate shall state that the applicant has been given an actual and thorough examination, including a standard serologic test for syphilis. The examination shall not have been more than fifteen (15) days prior to the date of issuance of such license and the certificate shall show that the results of such examination, tests and history showed that the person examined was free from any infectious condition of syphilis. No physician shall issue such certificate to any person whom he knows or has reasons to believe is infected with any condition of syphilis that would be infectious or who has any clinical evidence of infectious venereal disease."

The above section provides that the certificate by the physician "shall show the results of such examination, tests and history showed that the person examined was free from any infectious condition of syphilis." Such certificate cannot be made by the physician until the report is received from the laboratory which makes the standard serologic test required by Section 1.

In other words, the examination by the doctor

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cannot be consummated nor the certificate dated without the laboratory report. Therefore, we believe that the Clerk should certify the date which appears in the physician's certificate.

In regard to your second question, Article 4606, Vernon's Civil Statutes, is as follows:

"The clerk shall record all licenses so issued by him in a well bound book kept for that purpose. It shall be the duty of the person solemnizing the rites of matrimony to indorse the same on the license and return it to the county clerk within sixty days after the celebration aforesaid; such return shall be recorded with the license.

Although Section 10 of House Bill 588 provides that "No person authorized to solemnize marriages shall perform said marriage after the expiration of fifteen (15) days from the date of examination as disclosed by the County Clerk's certificate," nevertheless the plain provision of Article 4606 provides that the return shall be recorded with the license upon receipt of same. In view of the foregoing, it is our opinion that the Clerk should record the marriage license even though the marriage ceremony has been solemnized after the fifteen day period.

Article 3930, V.C.S., provides in part as follows:

"Clerks of the county Court shall receive the following fees: . . .

"Each certificate to any fact or facts contained in the records of his office, with certificate and seal, when not otherwise provided for - .50."

Section 5 of Article 3912e, V.C.S., provides:

"It shall be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all official service performed by them. As and when such fees are collected they shall be deposited in the Officers' Salary Fund, or funds provided in this Act. . . ."

In view of the foregoing, you are respectfully advised that it is the duty of the County Clerk to collect a fee of fifty cents for issuing the certificate on a marriage license under the provisions of House Bill 588, Acts of the 51st Legislature, 1949, and deposit same in the Officers' Salary Fund of the county.

Since Section 8 of House Bill 588 which provides that all records connected with the court order shall be held in absolute confidence and shall not be open to the public inspection, it would necessarily follow that the County Clerk should have a Special Docket and Minute Book in which to enter and record these orders. If an order is entered on the regular Docket or the Minutes recorded in the regular Minutes in the County Clerk's office, the same would be open to public inspection.

SUMMARY

The County Clerk should certify on the reverse side of the marriage license the date which appears in the certificate of the physician who examines the applicant. Sec. 1, H.B.588, Acts 51st Leg., 1949.

The County Clerk should record the marriage license and return even though the marriage ceremony has been solemnized after the fifteen day period. Art.4606, V.C.S.

The County Clerk is entitled to collect a fee of fifty cents for issuing the certificate on a marriage license. Art.3930, V.C.S.

The County Clerk should have a Special Docket and Minute Book in which to enter and record the court orders provided for in Section 8 of House Bill 588, Acts of the 51st Legislature, 1949.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

APPROVED

Joe R. Brumhill

FIRST ASSISTANT
ATTORNEY GENERAL

BA:mw

By

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Assistant