



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WAGGONER CARR  
ATTORNEY GENERAL**

February 6, 1963

Honorable Doug Crouch  
Criminal District Attorney  
Tarrant County  
Fort Worth, Texas

Opinion No. C- 10

Re: Docketing of cases in  
the Probate Court of  
Tarrant County.

Dear Mr. Crouch:

Your request for an opinion reads as follows:

"This office has been asked to request an opinion from the Attorney General concerning the following question:

"In view of the provisions of Art. 1970, Section 3, V.C.S. providing for the county clerk to alternate cases in the respective courts, is the county clerk obliged to allow clerks appointed by the respective courts to interview patients prior to receiving applications and assigning them alternately to either the Tarrant County Probate Court or the County Court.

"In connection with the above question it appears that Art. 1970, Section 15, V.C.S. provides for a clerk to be appointed by the Judge of the County Probate Court. It appears that no specific duties are assigned such clerk. No such duties having been assigned such clerk the court has adopted a practice of requiring such clerk appointed by him to interview alleged mentally ill persons prior to the processing of the application and the assigning of said cases alternately to the respective courts.

"It would seem that the plain provisions of Art. 1970 V.C.S. providing that all proceedings be filed with the county clerk and that he alternate such cases so filed to the respective courts that it is within the province of the county clerk alone to receive and file applications and assign them alternately. Further, the Mental Health Code contemplates (Art. 5547-12 V.C.S.) that all applications, petitions, certificates and all other papers permitted or provided to be filed in the county court by this Code shall be filed with the county clerk of the proper county who shall file the same and endorse on each paper the date filed and the docket number and his official signature.

"Art. 1970, Section 3 and Art. 5547-12 having specifically assigned the duty of receiving, docketing, and alternating cases in the various courts, it would appear that such duties are to be carried out and executed exclusively by the county clerk and deputies appointed by him. Any other procedure would make it impossible for him to alternate cases for the reason that he could not know whether an application would actually be received prior to receiving the results and attitude of the interviewing clerk so appointed by the court. While it is generally accepted that courts may establish certain procedures in connection with the processing of matters before them and it is true further that the filing of a case or docketing in either of these courts is for all purposes in full force and effect as though it were filed in the other, the statutes having clearly prescribed the procedure and it appears therefore that both the county clerk and the respective courts are obliged to follow the statutory mandates.

"The county officials concerned are awaiting your opinion in this matter so that they may act accordingly."

Hon. Doug Crouch, page 3 (C-10 )

The Probate Court of Tarrant County was created in 1957 by the provisions of House Bill 662, Acts of the 55th Legislature, Regular Session, 1957, chapter 400, page 1204, codified in Vernon's as Article 1970-345, Vernon's Civil Statutes. Section 3 of this Act required:

" . . . All such new matters and proceedings within the jurisdiction of the Probate Court of Tarrant County and the County Court of Tarrant County filed on said day first day of the initial term of the Probate Court, or thereafter filed with the County Clerk of Tarrant County, irrespective of the Courts or Judge to which the matter or proceeding is addressed, shall be filed by said Clerk alternately in said respective Courts in the order in which the same are deposited with him for filing, beginning first with the County Court of Tarrant County. . . ."

Section 3 was amended by the provisions of Senate Bill 435, Acts of the 56th Legislature, Regular Session, 1959, chapter 334, page 739, by inserting therein the following provisions:

" . . . No proceeding had in either of said courts, nor any order entered therein, shall be invalid because of any failure of said clerk to file new matters and proceedings alternately as above provided. . . ."

In addition thereto, Section 15a was added to the Act creating the Probate Court of Tarrant County by the 1959 Act and provides:

"No action taken, nor any order made or entered, nor any application, pleading, motion, bond, citation, return of citation filed, nor any other proceeding had in the County Court of Tarrant County or in the Probate Court of Tarrant County, heretofore or hereafter, shall ever be held invalid because done in either of said courts, or because of erroneous reference therein to either of said courts by the name of the other of said courts, and as against any complaint or charge of such nature,

Hon. Doug Crouch, page 4 (C-10 )

all of the same heretofore done are hereby validated for every purpose."

In view of the 1959 amendments to Article 1970-345, Vernon's Civil Statutes, above referred to, you are advised that the County Clerk is directed to file all such matters and proceedings over which the County Court of Tarrant County and the Probate Court of Tarrant County have concurrent jurisdiction, alternately in the respective courts, but the failure to so file will not invalidate any order entered on such matters.

Turning to your question concerning the duties of the clerk employed by the Judge of the Probate Court, Section 15 of House Bill 662, Acts of the 55th Legislature, Regular Session, 1957, chapter 400, page 1204 at page 1206 provided:

"The Commissioners Court of Tarrant County shall provide a secretary for the Judge of the Probate Court of Tarrant County, and such other and additional clerical assistants as may be required to properly carry on the business of said Court, at salaries to be fixed by the Commissioners Court."

Section 15 of this Act was amended by House Bill 626, Acts of the 57th Legislature, Regular Session, 1961, chapter 485, page 1083, so that it now provides:

"The Commissioners Court of Tarrant County shall provide the following employees for the Judge of the County Probate Court of Tarrant County: (a) a secretary to be paid not less than Four Thousand, One Hundred and Forty Dollars (\$4,140) per annum, and (b) a chief clerk to be paid not less than Six Thousand Dollars (\$6,000) per annum, at salaries to be fixed by the Commissioners Court but not less than the figured indicated, which salaries shall be paid monthly out of the County Treasury by the Commissioners Court from any funds available for this purpose, provided, however, that the Judge of the County Probate Court of Tarrant County is hereby authorized to employ, supervise, and terminate each and every one of said employees. The Commissioners Court of Tarrant County may also provide such other and additional clerical

assistance as may be required to properly carry on the business of said Court at salaries to be fixed by the Commissioners Court." (Emphasis added).

It is noted by the underlined portion of Section 15 of Article 1970-345, Vernon's Civil Statutes, quoted above, that the clerk employed pursuant to its provisions is under the supervision of the Judge of the Probate Court. Therefore, it is the duty of such clerk to perform such functions under all matters previously filed in the Probate Court as may be directed by the Judge of the Probate Court of Tarrant County.

Section 13 of Article 1970-345, Vernon's Civil Statutes, provides that the County Clerk shall be the clerk of the Probate Court and his duties are prescribed by the provisions of Section 3 of Article 1970-345. Whenever an application or petition is deposited with the County Clerk for filing, it is the duty of the County Clerk to immediately file such application or petition in the proper court. We know of no provision which would authorize the County Clerk to delay the filing of an application or petition deposited with him for filing.

You are therefore advised that the County Clerk is not authorized to delay filing of an application or petition which has been deposited with him for filing pending an interview of an alleged mentally ill person named in the pleading. In this connection, you are advised that the clerk employed by the Judge of the Probate Court pursuant to the provisions of Section 15 of Article 1970-345, Vernon's Civil Statutes, has no duty concerning matters not pending in the Probate Court of Tarrant County.

#### S U M M A R Y

The County Clerk of Tarrant County is directed by the provisions of Section 3 of Article 1970-345, Vernon's Civil Statutes, to file all matters filed with him over which the Probate Court of Tarrant County and the County Court of Tarrant County have concurrent jurisdiction, alternately in the respective courts in the order in which the same are deposited with him for filing, beginning with the County Court of Tarrant County. Failure to so file, however, will

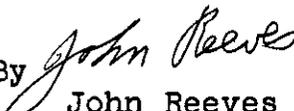
Hon. Doug Crouch, page 6 (C- 10 )

not invalidate any order entered by said courts on such matters, because of any failure of the County Clerk to file such matters alternately.

The County Clerk is not authorized to delay the filing of an application or petition deposited with him for filing until an alleged mentally ill person named in the pleading has been interviewed.

Yours very truly,

WAGGONER CARR  
Attorney General of Texas

By   
John Reeves  
Assistant

JR:ms

APPROVED:

OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL  
By: Stanton Stone