



**THE ATTORNEY GENERAL  
OF TEXAS**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

**AUSTIN, TEXAS 78711**

May 15, 1967

Hon. Neal E. Birmingham  
Criminal District Attorney  
Cass County  
Linden, Texas

Opinion No. M- 74

Re: Whether a District Clerk  
can serve as a receiver  
in a case pending in the  
court of which he is the  
clerk.

Dear Mr. Birmingham:

By letter you have requested an opinion in regard to  
the above stated matter, and we quote from your letter as follows:

"Mr. W. A. Watson, Jr., is the duly elected  
and acting clerk of the District Court of Cass  
County, Texas. From time to time it is neces-  
sary for the court to appoint a receiver in cer-  
tain civil cases, It is often inconvenient and  
difficult to obtain the services of a dependable  
and qualified person in Cass County. This is  
particularly true when nominal amounts are in-  
volved.

"It would be beneficial and convenient to  
the court, the Bar and the litigants if Mr. Watson  
could be appointed . . . . .

". . . . .

"This is not a matter involved in litigation  
or likely to be. The request is made solely in  
order to properly advise Mr. Watson and the court  
and Bar as to whether or not such appointment is  
either prohibited or incompatible with his  
official duties."

At the outset, we have considered the effect of Sections  
33 and 40 of Article XVI, Vernon's Texas Constitution, upon the  
qualifications of a District Clerk to serve as a receiver. We  
have concluded that a District Clerk may serve as a receiver without  
violating the dual office holding prohibition of our constitution

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and would not vacate his office by being appointed receiver.

"Ordinarily a receiver is a disinterested person appointed by the court to receive and preserve property or funds in litigation pendente lite." 49 Tex.Jur.2d, 12, Receivers, Sec. 1.

"A receiver acts as an officer of the court, and his duty is to protect the interests of all, pending the litigation." Faulk v. Futch, 147 Tex. 253, 214 S.W.2d 614 (1948).

The statement is made in 45 Am.Jur. 108, Receivers, Sec. 128, that while the receiver is an officer of the court, he holds no public office and is not engaged in exercising a public trust. The case of State v. Whitehurst, 113 A.L.R. 740, 212 N.C. 300, 193 S.E. 657 is cited as authority. Although the Texas courts have not passed directly on this matter, the Court of Civil Appeals in Texarkana has stated:

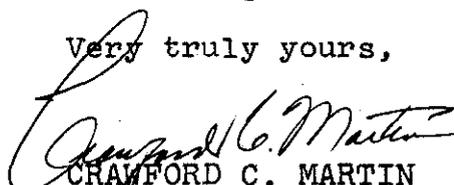
"The inhibition of the statute, we think, is against persons interested in the subject-matter of the litigation or results sought to be attained thereby. It is common practice in some jurisdictions to appoint the clerk of the court receiver, and a sheriff has been held not to be ineligible to appointment. . . ." Crawford v. Crawford, 163 S.W. 115-116 (Tex.Civ.App. 1913, n.w.h.). (Emphasis added.)

In the situation of a court reporter, it was held in Robertson v. Ellis County, 84 S.W. 1097 (Tex.Civ.App. 1905, n.w.h.), that a court reporter was not a public officer, but only an officer of the court. We believe that a receiver comes within this rule. In this connection, also see Attorney General's Opinions Nos. 0-6491 and 0-5371.

#### S U M M A R Y

A district clerk may accept an appointment as a receiver in a case pending in the court of which he is the clerk, without vacating his office.

Very truly yours,

  
CRAWFORD C. MARTIN  
Attorney General of Texas

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APPROVED:  
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