



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

March 24, 1988

Honorable Amy Ayers Adams
District Attorney
Parker County
Weatherford, Texas 76086

LO-88-34

Dear Ms. Adams:

You have asked several questions about the authority of the clerk of a justice court. Specifically you ask about the obligations of a clerk before whom law enforcement officers swear to criminal complaints.

You suggest that a clerk of a justice court must become a notary public so that law enforcement officers can swear to a criminal complaint before the court clerk. Article 45.01 of the Code of Criminal Procedure, however, provides that complaints before the justice court "may be sworn to before any officer authorized to administer oaths or before the recorder, clerk of the court, city secretary, city attorney or his deputy, each of whom, for that purpose, shall have the power to administer oaths." (Emphasis added.) See also Code Crim. Proc. art. 45.16 (complaint must be reduced to writing). Therefore, a clerk of a justice court need not become a notary public in order to receive criminal complaints.

Your specific question was whether section 406.014 of the Government Code, which applies to notaries public, requires a clerk of a justice court to keep a record of every criminal complaint sworn to before him. Your question was based on the assumption that the clerk of the justice court had to be a notary public in order to take criminal complaints. As indicated, however, the authority of the clerk of a justice court to take criminal complaints flows from article 45.16 of the Code of Criminal

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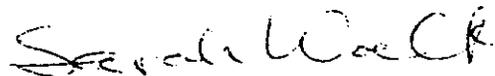
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Procedure. Even if the clerk of a justice court is in fact a notary public, the requirements of section 406.014 of the Government Code do not apply to actions the clerk performs pursuant to article 45.01 of the Code of Criminal Procedure.

You also ask whether the clerk of a justice court may refuse to take acknowledgments for the general public. A 1939 Attorney General Opinion stated that a notary who was employed by a state agency could not refuse to take acknowledgments because it was the duty of a notary public to take acknowledgments of the public generally. Attorney General Opinion 0-471 (1939). We think opinion 0-471 incorrectly states the law and that it was impliedly overruled in Attorney General Opinions V-14 (1947) and 0-6786 (1945).

Attorney General Opinion 0-471 cited no authority for the proposition that a notary public has a duty to take acknowledgments whenever requested to do so, and we find no authority to support that proposition. A notary public is authorized to administer oaths and take acknowledgments. Gov't Code §406.016. See also Civ. Prac. & Rem. Code §121.001. But a notary who is employed by a governmental body is not authorized to perform notary services that interfere with the discharge of his duties as a public employee. See Attorney General Opinions V-14 (1947); 0-6786 (1947); see also Attorney General Opinion MW-251 (1982). Therefore, a clerk of a justice court who is also a notary public may refuse to take acknowledgments for the general public and, indeed, must refuse when doing so would interfere with the clerk's discharge of his duties as a public employee. We have enclosed copies of Attorney General Opinions MW-251, V-14, and 0-6786.

Very truly yours,



Sarah Woelk
Assistant Attorney General
Opinion Committee

APPROVED
Rick Gilpin
Chairman, Opinion Committee

SW/bc

Enclosures

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