



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

March 27, 1939

Honorable Charley Lockhart
State Treasurer
Austin, Texas

Dear Sir:

Opinion No. 0-474

Re: Whether affidavits for fixing laborers' and materialmen's liens must be stamped under Article 7047e, N. C. S.? *Ne*

We are in receipt of your request for our opinion as to whether affidavits made under Articles 5453, 5455 and 5456, Revised Civil Statutes, for the purpose of fixing and securing the liens prescribed in Article 5452, Revised Civil Statutes, must bear the tax stamps mentioned in Article 7047e (a), Revised Civil Statutes of Texas, reading in part as follows:

"Except as herein otherwise provided, there is hereby levied and assessed a tax of ten cents (10¢) on each One Hundred Dollars (\$100) or fraction thereof, over the first Two Hundred Dollars (\$200), on all notes and obligations secured by chattel mortgage, deed of trust, mechanic's lien contract, vendor's lien, conditional sales contract and all instruments of a similar nature which are filed or recorded in the office of the County Clerk under the Registration Laws of this State; providing that no tax shall be levied on instruments for an amount of Two Hundred Dollars (\$200) or less. After the effective date of this Act, except as hereinafter provided, no instrument creating a lien of any character to secure the payment of money, or reserving title to any property until the purchase price thereof shall have been paid, shall be filed or recorded by any County Clerk in this State until there has been affixed or recorded by any County Clerk in this State until there has been affixed to such instrument stamps in accordance with the provisions of this Section; . . ."

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In our opinion No. O-79, dated January 25, 1939, addressed to you, we expressed the view that abstracts of judgments are not within the purview of the taxing statute. The reasons for such holding in that opinion would be largely applicable here. The character of instruments specifically enumerated in Article 7047e (a), especially when considered in connection with the caption "levying a stamp tax upon certain promissory notes, and providing for the collection thereof", we think precludes an interpretation which would levy a tax upon the privilege of filing and recording the affidavits. There being no need to repeat the reasons given in Opinion No. O-79, we forego any further discussion.

We answer your question in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*
Glenn R. Lewis
Assistant

GRL:N

APPROVED

J. F. Moore
FIRST ASSISTANT ATTORNEY GENERAL

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