



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

El Paso Co. April 19, 1939

Hon. Leon Kotosky
Assistant County Attorney
El Paso, Texas

Dear Sir:

Opinion No. O-637
Re: May county clerk adopt photo-
static method of recording written
instruments.

This will acknowledge receipt of your letter of April 15, 1939, in which you ask an opinion of this department as to the legality of installing and using a photostatic machine in the office of county clerk of El Paso County, Texas for the purpose of recording all instruments authorized or required to be recorded by the county clerk.

A careful examination of the authorities does not reveal that this question has heretofore been passed upon, either by this office or the courts of this state.

Article 6591, Revised Civil Statutes of Texas, 1925, makes the county clerk of each county the recorder for his county and provides that "they shall provide and keep in their offices well-bound books in which they shall record all instruments of writing authorized or required to be recorded in the county clerk's office."

Article 6595, Revised Civil Statutes of Texas, 1925, prescribes in detail the duty of the county clerk with respect to recording instruments authorized by law to be recorded. This article reads as follows:

"Each recorder shall, without delay, record every instrument of writing authorized to be recorded by him, which is deposited with him for record, with the

acknowledgments, proofs, affidavits and certificates thereto attached, in the order deposited for record by entering them word for word and letter for letter, and noting at the foot of the record the hour and the day of the month and year when the instrument so recorded was deposited in his office for record."

It was held by the Supreme Court of Vermont in the case of Town of Bennington vs. Edward A. Booth, 57 A. L. R. 156, that mandamus would not lie against the town clerk to compel him to discontinue his use of the photostatic method of recording instruments of which by law he was made the recorder. This decision was an interpretation of Article 3951, General Laws of Vermont, which reads in part, that the clerk shall:

"Record at length, in books to be furnished by the town"

The court, in speaking of the photographic method employed by the clerk said:

"It is plain that the clerk has recorded at length and that the material he provided, used and the town paid for, were furnished by the town. If, within the meaning of the statute, the photostatic records are books, they lack nothing required by General Laws, Article 3951.... The object of the statute.....was to provide for the making of records; not for the use of some particular kind of books."

The petitioners, in the case of People ex rel Arnkmecht vs. Haas, 311 Ill. 164, 142 NE 549, sought a mandamus to compel a recorder of deeds to copy a deed in writing in a well-bound book instead of using the photostatic method of recording. The mandamus was denied. The statute involved in this case, was very similar to Article 6595, supra, and is as follows:

"Every recorder shall, as soon as

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practicable after the filing of any instrument in writing in his office, entitled to be recorded, record the same at length in the order of time of its reception, in well-bound books to be provided for that purpose."

The court in its learned opinion, said:

"To record means to transcribe; to write an authentic account of; to preserve the memory of, by written or other characters; to enter in a book for the purpose of preserving authentic and correct evidence of the thing recorded. Whatever the method used for recording, it is a record of the things recorded as long as it is a true and correct copy. The object of recording a deed is to give it perpetuity and publicity, and that the two main requirements of a public record is that it shall be accurate and durable.....Every such officer not only has the authority, but is required by law, to exercise an intelligent discretion in the performance of his official duties. The law requires him to record certain instruments in a well-bound book, but it does not require him to record them in any particular method. As long as the method adopted by him is accurate and durable, he has performed his duty.....No argument is needed to demonstrate that photography is a much more accurate process of making a copy of an instrument than any other known method."

Looking again to our Texas Statutes, we observe that it is the duty of the county clerk to:

1. Provide and keep in their offices well-bound books in which they shall record instruments, word for word, and letter for letter.

2. Show in such recording all acknowledgments, proofs, affidavits and certificates thereto attached.

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3. Note at the foot of the record, the hour and the day of the month and year when the instrument so recorded was deposited in his office for record.

The statutes are entirely silent as to the method by which such instruments shall be recorded. To determine whether or not the photostatic method of recording instruments is legal, it must be tested for determination solely upon the basis of whether or not the duties of the county clerk hereinabove set out can be fully executed by the use of this new method of recording.

The phrase "well-bound book" as used in Article 6591, supra, need not necessarily mean a book in which the leaves or pages are not removable. The Legislature naturally had in mind in the passage of this act, that the instrument would be recorded in handwriting in a book in which the pages were immovable. With commercial necessity, the handwriting method gave way to the speedier and more legible typewriter method. It is a matter of common knowledge that the books in use generally by county clerks today are so constructed as to permit the individual pages to be removed, typed and then replaced in the books.

The propriety of recording in a loose leaf book as is in common use in Texas and elsewhere throughout the country, was raised in the case of Richardson vs. Wooland, 133 Miss. 417, 97 So. 808, and the court held that the fact that the statute required instruments to be recorded in a "well-bound book" did not require that the pages be not removable.

It is therefore, the opinion of this Department, and you are so advised, that your county clerk can install and use the photostatic method of recording written instruments which he is authorized to required to record providing such photostats are immediately incorporated into "well-bound books" and the other requirements of

provided

or

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the statutes herein enumerated are fully complied with.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Lloyd Armstrong*
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APPROVED:

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