



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable R. V. Rayford
County Auditor
Henderson, Texas

Dear Sir:

Opinion No. O-3128
Re: Whether tax levied by
Article 7047e, Vernon's
Annotated Civil Statutes,
is due upon recording of
certain instruments.

In your letter of February 4, 1941, you outline two
fact situations as follows:

(1) Mr. Doe executes and delivers to Mr. Brown a
mechanic's lien and the instrument is stamped. Mr. Brown
in turn assigns the mechanic's lien to Jacksonville Building
and Loan Association, which takes a deed of trust from Mr.
Doe, covering the same property and securing the same amount
of money.

While you do not so say, we assume from your letter
that the deed of trust is given in renewal and extension of
the indebtedness evidenced by the mechanic's lien.

(2) W. R. Skeen, executed a deed of trust to se-
cure M. P. Moore in the payment of the sum of \$40,000.00 the
stamp tax being paid on the deed of trust. Mr. Moore, assigns
the deed of trust to the First State Bank, Overton, Texas, af-
ter a considerable amount had been paid on the indebtedness.
Mr. Skeen has entered into an agreement with the bank reciting
that the bank has advanced to him oneys with which to pay said
indebtedness to Mr. Moore and in addition thereto has advanced
other money to him, and that there is now due to said bank the
sum of \$25,000.00. In this agreement the due date of said
\$25,000.00 is fixed to fall due in installments and the deed
of trust is continued in force and effect to secure the payment
of said sum of money.

You request our opinion as to whether the tax levied
by Article 7047e, Vernon's Annotated Civil Statutes is due on
the above instruments, that is, the deed of trust taken by the
Jacksonville Building and Loan Association and the extension

agreement between Mr. Skeen and the Overton Bank. Section (a), Article 7047e, Vernon's Annotated Civil Statutes, reads as follows:

"Except as herein otherwise provided there is hereby levied and assessed a tax of ten (10¢) Cents on each One Hundred (\$100.00) Dollars or fraction thereof, over the first Two Hundred (\$200.00) Dollars, 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; provided that no tax shall be levied on instruments securing an amount of Two Hundred (\$200.00) Dollars, or less. After the effective date of this Act, except as hereinafter provided, no such instrument shall be filed 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; providing further that should the instrument filed in the office of the County Clerk be security of an obligation that has property pledged as security in a State or States other than Texas, the tax shall be based upon the reasonable cash value of all property pledged in Texas in the proportion that said property in Texas bears to the total value of the property securing the obligation; and providing further that, except as to renewals or extensions of accrued interest, the provisions of this section shall not apply to instruments given in renewal or extensions of instruments theretofore stamped under the provisions of this Act or the one amended hereby and shall not apply to instruments given in the refunding of existing bonds or obligations where the preceding instrument of security was stamped in accordance with this Act or the one amended hereby, provided further that the tax levied in this Act shall apply to only one instrument, the one of the greatest denomination, where several instruments are contemporaneously executed to secure one obligation; and provided further that when once stamped as provided herein, an instrument may be recorded in any number of counties in this State without again being so stamped. This section shall not apply to instruments, notes, or other obligations taken by or on behalf of the United States or of the State

of Texas, or any corporate agency or instrumentality of the United States, or of the State of Texas in carrying out a governmental purpose as expressed in any Act of the Congress of the United States or of the Legislature of the State of Texas, nor shall the provisions of this section apply to obligations or instruments secured by liens on crops and farm or agricultural products, or to livestock or farm implements, or an abstract of judgment.

"If the amount secured by an instrument is not expressed therein, or if any part of the security described in any such instrument appears to be located without the State of Texas, the County Clerk shall require proof by written affidavits of such facts as may be necessary to determine the amount of the tax due."

The mechanic's lien held by the Building and Loan Association evidenced the same indebtedness as Mr. Brown held prior to the assignment. Hence when the indebtedness held by the Building and Loan Association was renewed and extended by the deed of trust, it was an extension of the original indebtedness, the instrument securing which had been stamped. Under the express provisions of the Act, the deed of trust given by Mr. Doe for the benefit of the Building and Loan Association may be recorded without payment of the stamp tax.

If we are wrong in our assumption that the indebtedness was extended upon the execution of the deed of trust and if the latter instrument was simply given upon the same property to secure the same note without its being extended or renewed, the same result is reached if these transactions were, to all practical purposes, contemporaneous ones.

For the same reasons we reach the same result as to the deed of trust executed by W. R. Skeen as to that part of the original indebtedness which had not been paid. However, insofar as the renewal note of \$25,000 represented fresh money, or accrued interest, it must be stamped. For instance, if the \$25,000 note represents a renewal of the old indebtedness, to the extent of \$20,000 and if the remaining \$5,000.00 represents other money advanced or interest accrued on the original indebtedness, then there should be attached to it the same amount of stamps as would go on a deed of trust securing the sum of \$5,000.00

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Glenn R. Lewis
Assistant