



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable E. H. Griffin
County Attorney
Young County
Graham, Texas

Dear Mr. Griffin:

Opinion No. 0-1951

Re: Construction of Court Rule
No. 75, with respect to with-
drawing filed pleadings from
the office of the District
Clerk.

We beg to acknowledge receipt of your letter ask-
ing for an opinion upon the above subject matter, the let-
ter being as follows:

"I wish to submit to your department for
your opinion the following question:

"If a District Judge grants an order to
an attorney, or to an abstractor allowing such
individual to withdraw any filed pleading in
any case from the office of the District Clerk
without leaving a copy of such with the clerk,
is the said clerk legally obligated to obey
said order?"

* * * * *

It is the opinion of this department that you
have correctly interpreted Rule No. 75, governing prac-
tice and procedure in civil actions, to the effect that
the rule forbids the withdrawal of filed papers from the
clerk's office or custody, except upon the court's order
entered upon the minutes allowing such withdrawal, on
leaving a certified copy on file. It is further our con-
struction of the rule that the court is not authorized to
permit such removal except upon the requirement that such
certified copy should be left on file.

We are not prepared to hold, however, that if the
court should make an order allowing such withdrawal without

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the requirement to leave on file a certified copy, that the order would be void so as to justify the clerk in ignoring the order. We are inclined to the view, however, without expressly ruling that way, that the order would be absolutely void for want of jurisdiction in the court to make the particular order, although the making of such order of withdrawal generally is within the jurisdiction of the court.

Ordinarily, habeas corpus will not lie to discharge one held in an order of contempt of a court, unless the order is absolutely void -- that is, that the court had no jurisdiction to make the order.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Ocie Speer
Assistant

OS-MR

RECEIVED OCT 29, 1942

Genard C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED
BY THE
COMMITTEE
BY *B.W.*