



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

**GROVER SELLERS**  
ATTORNEY GENERAL

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Honorable Homer Garrison, Jr., Director  
Department of Public Safety  
Austin, Texas

Dear Sir:

Opinion No. O-5501

Re: Necessity and form of warning given accused while under arrest for purpose of securing handwriting samples to be used in evidence in a criminal case.

Your request for an opinion on the above matter reads as follows:

"In some cases it has been impossible for prosecuting officials of this state to introduce handwriting evidence in a case if the specimen writing has been taken from the suspect, while he is under arrest, and the proper warning was not given. It is our understanding that such evidence is admissible only when a warning similar to that used in taking voluntary confessions has been given the suspect.

"It is requested that an opinion be rendered as to whether the suspect must be given this warning before securing writing from him, and if it is necessary that such a warning be given; that we be furnished with a form of such a warning, in order that we might supply the officers of this state, with this information for their use when securing handwriting evidence.

". . . ."

Although the soundness of the rule has been questioned by legal scholars, it seems well settled in Texas that where the accused is in custody and samples of his handwriting are

secured for standards of comparison, that the same prerequisites existing in the ordinary confession situation must be met before they will be received in evidence. Kennison v. State, 260 S. W. 174; Click v. State, 44 S. W. (2d) 992; and Beacham v. State, 162 S. W. (2d) 706. For criticism of the rule see Texas Law of Evidence, McCormick and Ray, Section 527, page 676; and 3 Texas Law Review 485.

In the leading Texas case on this point, Kennison v. State, supra, the court in interpreting what is now Article 727, V. A. C. P. of Texas, quoted with approval this language from Branch's Annotated Penal Code, page 32, Section 59:

"The statute relating to confessions is not confined strictly to a technical confession but covers any act in the nature of a confession, statement or circumstance done or made by defendant while in confinement or custody, and not having been properly warned, which may be used by the State as a criminative fact against him."

Since the courts have held that handwriting secured from the accused while in custody is a confession or statement within the meaning of Article 727, C. C. P., all the rules governing the form, execution and admission in evidence of confessions apply with equal force to writing secured as a standard of comparison. Prosecutors are familiar with these rules and we think any elaboration would be unfruitful.

You have asked that we suggest a suitable form of confession to be used in a handwriting case and though the usual form generally in use by prosecutors in other cases would probably be sufficient to meet the statutory requirements, out of an abundance of caution we would suggest that the standard form set out in Willson's Texas Criminal Forms, Fifth Edition, Section 1057, page 690, be used with the interpolations hereinafter indicated by underlining.

**SUGGESTED FORM FOR VOLUNTARY CONFESSION CONSISTING OF SPECIMENS OF ORIGINAL HANDWRITING OF ACCUSED TAKEN WHILE IN CUSTODY**

I, A. B., Being in custody of C. D., Sheriff of \_\_\_\_\_ County, Texas, having been first

warned by E. F., County Attorney of \_\_\_\_\_  
County, Texas (or other person to whom the state-  
ment is made) the person to whom the hereinafter  
set out statement is made and to whom the follow-  
ing samples of my handwriting are given, that I  
do not have to make any statement at all and that  
I do not have to write or give specimens of my  
handwriting, and that any statement made by me  
and any handwriting done by me, may be used in  
evidence against me on my trial for the offense  
concerning which this statement is made and con-  
cerning which this handwriting is done, do here  
make the following voluntary statement in writing  
and do here voluntarily write with my own hand the  
following samples and specimens of writing and this  
statement and this writing is made and given to  
the said E. F.

(Here set out statements if any, and have  
accused write desired specimens in his own hand.)

A. B.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

We sincerely hope that our answer fully covers your  
inquiry and that it will prove to be of some help in your cases  
involving questioned documents.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (s)

Eugene Alvis  
Assistant

EA:db/JCP

APPROVED AUG. 16, 1943  
R. W. Fairchild  
Acting ATTORNEY GENERAL OF TEXAS

APPROVED:  
Opinion Committee  
By R. W. F., Chairman

F.C.C.