



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL  
ATTORNEY GENERAL**

April 30, 1952

Hon. James M. Cotten  
County Attorney  
Parker County  
Weatherford, Texas

Opinion No. V-1450

Re: Duty of the County  
Clerk to record  
deaths and births  
occurring in Parker  
County within or with-  
out the City of  
Weatherford.

Dear Sir:

Your request for an opinion of this of-  
fice reads in part as follows:

"Must the County Clerk of Parker  
County, Texas file death certificates  
presented to him for filing by an under-  
taker. Also must he file birth and death  
certificates presented to him by a Jus-  
tice of the Peace or the City Secretary  
of Weatherford.

"Weatherford is an incorporated  
city of 10,500 population. The City  
Secretary is charged by ordinance with  
the duty of maintaining true and accu-  
rate copies of each birth and death and  
stillbirth certificate permanently filed  
in his office. There are six Justice  
Precincts in Parker County outside of  
Weatherford. Normally no births occur  
in these precincts, but deaths do occur  
in these precincts."

Rule 42a, Article 4477, V.C.S., provides  
in part:

"Undertaker's certificate.--That the  
undertaker, or person acting as under-  
taker, shall file the certificate of  
death with the local registrar of the  
district in which the death occurred  
and obtain a burial or removal permit  
prior to any disposition of the body;

provided that any person who furnishes a casket, coffin or box in which to bury the dead and who renders service like or similar to that usually rendered by an undertaker, shall for the purposes of this Act be deemed an undertaker. He shall obtain the required personal and statistical particulars from the person best qualified to supply them, over the signature and address of his informant. He shall then present the certificate to the attending physician, if any, or to the health officer, justice of peace, or coroner, as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in Sections 7 and 8. . . ."

Rule 40a, Article 4477, V.C.S., sets out the information which is required to be contained in death certificates.

Rule 42a clearly requires the undertaker to file the certificate of death with the local registrar in the district in which the death occurred. "Local registrar," as provided in Rule 36a, Article 4477, V.C.S., does not include the county clerk. Neither Article 4477 nor any other law requires the county clerk to file death certificates presented to him by an undertaker. Prior to the passage of House Bill 243, Acts 52nd Leg., R.S. 1951, ch. 87, p. 145 (Article 4477, V.C.S.), all local registrars (including those in cities having an ordinance requiring that a true and correct copy of birth and death certificate be permanently filed in the office of the city registrar) were required to deposit copies of each birth, death, and stillbirth certificate, filed with him, with the county clerk, who was required to record them.

However, House Bill 243, supra, amends, among others, Rules 36a and 53a of Article 4477, V.C.S.

Rule 36a now provides:

"For the purposes of this Act the State shall be divided into primary registration

districts as follows: Each justice of the peace precinct and each incorporated town of two thousand, five hundred (2,500) or more population, according to the last United States Census, shall constitute a primary registration district, provided the State Board of Health may combine two (2) or more registration districts, or may divide a primary registration district into two (2) or more parts, so as to facilitate registration, and in the justice of the peace precinct, the justice of the peace shall be local registrar, and in cities of two thousand, five hundred (2,500) or more, according to the last United States Census, the city clerk or city secretary shall be the local registrar of births and deaths.

"It is hereby declared to be the duty of the justice of the peace in the justice of the peace precinct, and the city clerk or city secretary in the city of two thousand, five hundred (2,500) or more population to secure a complete record of each birth, death, and stillbirth that occurs within their respective jurisdictions."

Rule 53a now provides in part:

"And provided further, that the justice of the peace, city clerk or secretary, and the appointed local registrar shall submit to the commissioners court or county auditor, as the case may be, a true and accurate copy of each birth, death, and stillbirth certificate filed with him, and such copies shall bear his file date and signature and shall be deposited in the county clerk's office, provided, however, that this provision shall not apply to cities having an ordinance requiring that true and accurate copies of each birth, death, and stillbirth certificate be permanently filed in the office of the city registrar. The county clerk shall be paid for indexing and preserving such records, such compensation as may be agreed upon by the commissioners court." (Emphasis added.)

It is seen from the above statutes that

the local registrar in a city having an ordinance requiring that a true and correct copy of each birth and death certificate filed in his office is not required to deposit a copy with the county clerk. Neither is the county clerk required to record such copies.

It is noted, however, that under Rule 53a all local registrars except those in cities having such an ordinance are required to deposit a copy of each birth, death, and stillbirth filed with them in the county clerk's office, and the county clerk is to record the same.

In view of the foregoing, it is our opinion that the county clerk is required to record all birth, death, and stillbirth certificates filed with him by the justices of the peace of Parker County. However, the county clerk is not required to file or record birth or death certificates presented to him by the city secretary of Weatherford.

SUMMARY

The county clerk of Parker County is required to record copies of all birth and death certificates deposited with him by all justices of the peace of the county. However, he is not required to file birth or death certificates presented to him by the city secretary of Weatherford, a city requiring the permanent filing of such certificates with the city registrar. Neither is the county clerk required to file death certificates presented to him by an undertaker, since Rule 40a, Article 4477, V.C.S., requires that undertakers file death certificates with the local registrars named in the statute.

APPROVED:

J. C. Davis, Jr.  
County Affairs Division

E. Jacobson  
Reviewing Assistant

Charles D. Mathews  
First Assistant

Yours very truly,

PRICE DANIEL  
Attorney General

By   
Bruce Allen  
Assistant

BA:mh