



**THE ATTORNEY GENERAL  
OF TEXAS**

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ATTORNEY GENERAL**

**AUSTIN 11, TEXAS**

May 18, 1953

Hon. Frank D. McCown  
County Attorney  
Dallam County  
Dalhart, Texas

Opinion No. S-42

Re: Authority of the County and  
District Clerk to require a  
court cost deposit before  
accepting any instruments  
for filing and issuance of  
process or recordation.

Dear Sir:

You have requested an opinion on the following  
question:

"May a County or District Clerk re-  
fuse to file law suits and issue process  
and refuse to file instruments and record  
them of record before the costs deposit is  
made, in the case of law suits, fees are  
paid, in the case of filing and recorda-  
tion?"

Rules Civil Procedure, Rule 142 (old Article  
2067 Vernon's Civil Statutes unchanged) provides:

"The clerk may require from the plain-  
tiff security for costs before issuing any  
process, but shall file the petition and  
enter the same on the docket. No attorney  
or other officer of the Court shall be  
surety in any case pending in the court,  
except under special leave of court."

Further, security for costs may be made by  
depositing a sum of money in lieu of the bond to the  
clerk of the court. Rules Civil Procedure, Rule 146.

Rule 145 of the Rules of Civil Procedure pro-  
vides in part that when a party is too poor to pay costs  
and is unable to give security therefor, the clerk shall

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nevertheless file the suit, issue process and perform all other services required of him in the same manner as if security has been given.

The pertinent part of Article 3932, Vernon's Civil Statutes, applicable to your question whether a clerk may demand recording fees prior to the filing and recording is as follows:

". . . No County Clerk shall be compelled to file or record any instrument of writing permitted or required by law to be recorded until the payment or tender of payment of all legal fees for such filing or recording has been made. Nothing herein shall be held to include papers or instruments filed or recorded in suits pending in the County Court."  
(Emphasis added).

It will thus be seen that the county or district clerk shall file the petition in every case when it is presented to him, but he is not required to issue any process thereon without security for costs in said cause, or unless a sum of money is deposited with the clerk sufficient to secure the estimated costs, or unless the plaintiff shall file a paupers affidavit in lieu of the bond or deposit.

Further, the county clerk shall collect all legal fees before filing or recording any instrument required by law to be filed or recorded, except "papers or instruments filed or recorded in suits pending in the County Court."

#### SUMMARY

Clerks of the district and county courts are required to file petitions in lawsuits when presented to them, but are not required to issue process thereon unless security for costs is given or is avoided in one of the ways provided by

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law. Clerks of county courts are not required to file or record any instrument required by law to be filed or recorded unless all legal fees are first paid or tendered.

Yours very truly,

APPROVED:

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