



THE ATTORNEY GENERAL  
OF TEXAS

AUSTIN, TEXAS 78711

JOHN E. TULL  
ATTORNEY GENERAL

February 7, 1975

The Honorable Alton R. Griffin  
Criminal District Attorney  
Lubbock County Courthouse  
Lubbock, Texas 79401

Opinion No. H- 519

Re: Construction of article  
1899a, V. T. C. S., with  
reference to particular pro-  
blems in microfilming  
public records.

Dear Mr. Griffin:

You have requested our opinion concerning the operation of article 1899a, V. T. C. S., insofar as it may authorize the microfilming of sealed files, such as adoptions, juvenile proceedings, and inquests.

Article 1899a, section 1, V. T. C. S., provides:

The District Clerk may, pursuant to this duty to keep a fair record of acts and proceedings, provide a plan for the reproduction by microfilm or other process which correctly and legibly reproduces or which forms a medium of copying or reproducing all records, acts, proceedings held, minutes of the court or courts, and including all registers, records, and instruments for which the District Clerk is or may become responsible by law. The plan shall be in writing and shall include provisions for maintenance, retention, security, and retrieval of all records so microfilmed or otherwise duplicated.

Section 11.17(b), Texas Family Code, provides for the transfer of the complete file of an adoption proceeding to the State Department of Public Welfare upon entry of a decree of adoption. Section 4 of article 1899a allows destruction of instruments and records pertaining to a hearing,

proceeding, or trial only after one year following the time at which the judgment has become final and the time for an appeal has elapsed or a mandate which is finally decisive has been issued. Attorney General Opinion H-466 (1974) construed section 11.17(b) of the Family Code to allow retention of the adoption file for only a reasonable time, which would seldom exceed ten days. Therefore the District Clerk is not authorized to destroy the original file in an adoption proceeding, and, were he to microfilm such a file, the copy so obtained must be sent to the Department of Public Welfare. Since the District Clerk has only temporary custody of the original file and is not authorized to retain a copy of it, it is our opinion that article 1899a does not authorize the microfilming of adoption records.

Concerning files and records of juvenile proceedings, section 51.14(c), Texas Family Code, requires a separate filing system from that relating to adults and provides that the files and records be maintained only on a local basis. Section 51.14(a) restricts inspection of these files and records to certain specified persons. Section 51.16(a) provides for the sealing of these files and records upon the order of a juvenile court. Upon such an order all files and records pertaining to the juvenile proceeding involved are to be transferred to the court issuing the order, all index references to the files and records are to be deleted, and all future requests concerning the juvenile are to be properly answered by stating that no record exists. Section 51.16(e).

The clerk has permanent custody of these files and records and they are therefore ". . . records . . . for which the District Clerk is or may become responsible by law." Article 1899a. Consequently, the clerk may microfilm files and records pertaining to juvenile proceedings, but the system adopted under article 1899a must conform to the confidentiality requirements of the Family Code which are discussed above.

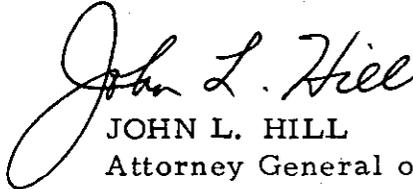
Article 49.22, Code of Criminal Procedure, provides for the retention by the district clerk of a sealed envelope containing all papers pertaining to an inquest subject to an order of the court conducting the inquest. The district clerk is to "safely keep the same." (Emphasis added). It is our opinion that the clerk's duty being to safely keep the sealed envelope, he is not authorized by article 1899a to open it and microfilm the contents without an order of the court conducting the inquest.

SUMMARY

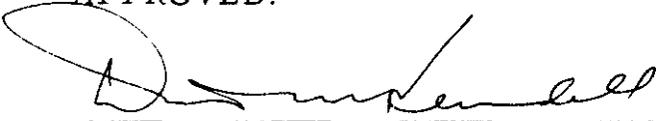
Article 1899a, V. T. C. S., does not authorize the district clerk to microfilm the file or records of an adoption proceeding. The district clerk also may not open a sealed envelope containing papers pertaining to an inquest, nor microfilm its contents except pursuant to an order of the court conducting the inquest.

Article 1899a authorizes the District Clerk to microfilm the files and records pertaining to juvenile proceedings, but the system which is utilized must meet the confidentiality requirements of the Family Code.

Yours very truly,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
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DAVID M. KENDALL, First Assistant

  
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C. ROBERT HEATH, Chairman  
Opinion Committee

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