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DEPUTY ATTORNEY GENERAL FOR LITIGATION
OFFICE OF ATTORNEY GENERAL

Susan D. Reed
Criminal District Attorney
Bexar County, Texas

RQ-0084-JC

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Opinion Committee

July 9, 1999

John Cornyn
Attorney General
Office of the Attorney General
State of Texas
P O Box 12548
Austin, Texas 78711-2548

FILE # ML-40904-99
LC 40904

RE: Whether the County Clerk should accept for filing a Declaration of Domestic Partnership

Dear Attorney General Cornyn:

The County Clerk of Bexar County, Texas has been asked to file a "declaration of domestic partnership," a sworn statement of two individuals who are unmarried but reside together. The document is a declaration and oath that the two individuals share in each other's lives in a committed relationship and that they agree to be jointly responsible for each other's financial responsibilities. Further, the document provides that the two individuals will present the County Clerk with a dissolution affidavit within 31 days of the termination of the personal relationship. Should the County Clerk accept such a document for filing?

Local Government Code §192.001 provides that the County Clerk "shall record each deed, mortgage, or other instrument that is required or permitted by law to be recorded." The only guidance on what is "permitted by law to be recorded" involves Republic of Texas documents. In DM-239, it was determined that a county clerk should not file a judgment issued by a "common law court" because no "common law court" is vested with judicial power by constitution or statute. Letter Opinion Number 98-016, which also addresses the filing of fraudulent documents issued by so-called "common law courts", states that "the county clerk has a ministerial duty to accept a document for filing and recording if a statute authorizes, requires, or permits it to be filed in the clerk's office, and if it is regular on its face. If no statute authorizes, requires, or permits a document to be filed in the clerk's office, he may not accept it for filing." Under this interpretation of LGC §192.001, it would appear the county clerk has no authority to accept a "declaration of domestic partnership" since that document/declaration is not recognized in the constitution or statutes of this state.

Please advise whether the County Clerk should accept for filing a "declaration of domestic partnership."

Sincerely,

A handwritten signature in black ink, appearing to read "Susan D. Reed". The signature is stylized with a large, looped "S" and "R".

SUSAN D. REED

SDR/dj