



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable Robert C. Hughes  
District Attorney  
51st Judicial District  
San Angelo, Texas

Dear Mr. Hughes:

Opinion No. O-6668

Re: Whether or not the State Bar Act, Article 320-A, Vernon's Revised Civil Statutes, supercedes or repeals that provision of Chapter 238, Acts of the 43d Legislature, Regular Session, 1933, saying: "Provided that nothing herein shall prevent Notaries Public from drawing conveyances for or without compensation."

We beg to acknowledge receipt of your letter asking for our opinion upon the above subject-matter, such letter being as follows:

"In the latter part of Sec. 2, Art. 430-A, Acts 1933, 43rd Leg. P. 838, Ch. 238, provides as follows:

"Provided that nothing herein shall prevent Notaries Public from drawing conveyances for or without compensation."

"Sec. 3, Art. 320-a, which is known as the State Bar Act as amended acts 1939, 46th Leg., P. 66, Sec. 1, provides as follows:

"Section 3. All persons who are new or who shall hereafter be licensed to practice law in this State shall constitute and be members of the State Bar, and shall be subject to the provisions hereof and the rules adopted by the Supreme Court of Texas; and all persons not mem-

Honorable Robert C. Hughes - page 2

bers of the State Bar are hereby prohibited from practicing law in this State."

"1. Does the State Bar Act Art. 320-A of the Revised Civil Statutes supersede or repeal that part of Art. 430-A of the Penal Code hereinabove quoted?

"2. Is the drawing of conveyances the practice of law?

"3. Is the State permitted to bring injunction suits under the State Bar Act preventing Notaries Public from drawing conveyances when same are drawn for compensation?

"4. Is the State permitted to bring injunction suits under the State Bar Act preventing Notaries from drawing conveyances when same are drawn without compensation?"

Chapter 238 passed by the 43d Legislature at its Regular Session, 1933, Article 430a of the Penal Code, Vernon's codification, contains the following:

"Section 1. It shall be unlawful for any corporation or any person, firm, or association of persons, except natural persons who are members of the Bar regularly admitted and licensed, to practice law."

Section 2 defines the practice of law and makes the following exception:

"Provided that nothing herein shall prevent Notaries Public from drawing conveyances for or without compensation."

Section 6 provides a penalty as for a misdemeanor against "any person, firm, corporation or association of persons violating any of the provisions of the Act."

The State Bar Act of the 46th Legislature, 1930, creates the State Bar an administrative agency of the Judicial Department of the State. In Section 3 the membership of the State Bar is defined and a provision is made that "all persons not members of the State Bar are hereby prohibited from practicing law in this State."

Honorable Robert C. Hughes - page 3

Section 8 declares that:

"All laws or parts of laws in conflict with this Act or with the rules and regulations adopted under this Act by the Supreme Court are hereby repealed."

The Rules governing the State Bar of Texas adopted by the Supreme Court, in pursuance of that statutory authority, regulate the disbarment, suspension and reprimand of members of the State Bar, and they also contain sections dealing with the unauthorized practice of law. Section 35 declares:

"Each grievance committee may institute and prosecute appropriate suits or proceedings, in the name of the committee, or any member thereof, or any party complaining, as may be advisable in the opinion of the majority of the committee, to suppress, prohibit, or prevent such unauthorized practice of the law, or may take such other action as it deems advisable under the circumstances, such as the filing of criminal charges or complaints. \* \* \*

"These Rules shall be cumulative of all laws of the State relating to the unauthorized or the unlawful practice of the law."

Neither the statutes nor the rules and regulations of the Supreme Court provided thereunder expressly repeal Article 320a of the statutes (Vernon's codification), nor do they contain any language that could fairly be held to repeal that statute by implication.

Repeals by implication are not favored. In order for there to be such repeal by implication, the two Acts must be inconsistent and irreconcilable with each other, so that it would be impossible for both of them to be the law at the same time. Neither the statutes nor the Rules of the State Bar provide for prosecution of those unlawfully practicing law, but the rules and regulations do expressly authorize the Grievance Committee to file such prosecutions, and declare that such rules "shall be cumulative of all laws of this State relating to the unauthorized or the unlawful practice of the law," thereby implying, if not declaring the continued force and effect of all existing penal laws relating to the unlawful practice.

Honorable Robert C. Hughes - page 4

From what we have said it follows that your Question 1 should be answered that the State Bar Act in no wise repeals or supersedes Article 430-A, Vernon's Codification of the Penal Code.

In answer to your Question No. 2, it is the opinion of this Department the drawing of instruments of conveyance, such as deeds, mortgages, assignments, bills of sales, and the like, by a Notary Public, not a member of the State Bar, is not the practice of law within the meaning of the Penal Code. It is specially excepted therefrom.

Your Question 3 should be answered in the affirmative. The drawing by a Notary Public of conveyances, such as we have mentioned above, when done for the public upon a compensation, undoubtedly is practicing law, and that portion of Section 35 of the rules and regulations by the Supreme Court governing the unauthorized practice of law authorizes such proceedings. (See O-3602 herewith). We have said that the drawing of such conveyances by a Notary Public was not the practice of law, within the Penal statutes, but it does not follow therefrom that the drawing of such conveyances is not the practice of law, as the same is governed by the State Bar Act. It is the exercise of a permitted classification for legal treatment by the Legislature to say that Notaries Public may not do those things, and may even be enjoined therefrom, but at the same time to say, as the Legislature has said in the Penal Code, such Notaries shall not be punished criminally therefor. See: *Tigner v. State*, (U.S.) 24 Law Ed. 1124.

Finally, answering your Question No. 4, we doubt whether the State Bar Act authorizes the bringing of injunction proceedings against Notaries Public for drawing conveyances occasionally and without compensation. This would hardly be "the practice of law", within the commonly-accepted understanding of that term.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Ocie Speer*  
Ocie Speer  
Assistant

OS-MR

Enclosure

