

The legislature, by imposing the tax on the value at the point of severance, §§211.30(5) and 211.31(1), F. S., recognized that minerals are not generally separated from the earth in pure form and that processing is usually needed to identify the mineral or minerals extracted. In *Haynes v. Eagle-Picher Co.*, 295 F.2d 761 (10th Cir. 1961), the court concluded that sulphur was indisputably a solid mineral and that its value was generally measurable at the point it was commercially identified. *Cf.* 26 U.S.C. §613.

The fact that the solid mineral sulphur is extracted from the earth in a molten state is not determinative of tax liability, since the tax is an excise tax on the privilege of severing the mineral from the soils or waters of this state. The taxpayer's economic conclusion to retain the sulphur in a molten form for further processing or refinement cannot alter the substance of his acts in severing an identifiable solid mineral upon which the legislature has chosen to make the levy in question. *Kendall House Apartments, Inc. v. Department of Revenue*, 245 So.2d 221 (Fla. 1971).

073-70—March 22, 1973

COURTS

SEAL FOR COUNTY COURT AND COUNTY COURT CLERK; DESIGN THEREFOR

To; Monroe W. Treiman, County Court Judge, Hernando County, Brooksville

Prepared by: Steven F. Dean, Assistant Attorney General

QUESTIONS:

1. Is a county court authorized to have a seal and if not, what seal, if any, should be used by such court?
2. What should be the design of the seal used by the clerk of the county court?

SUMMARY:

Neither the county court nor the clerk thereof is authorized a seal by existing statute.

Until legislatively or judicially clarified or determined otherwise, it would appear appropriate for those persons who are performing the duties of, or who are serving as, clerk of the county court and who are the custodians of the records, proceedings, and documents of the county court to adopt a private seal for the purpose of authenticating, exemplifying, attesting, or certifying official orders, records, proceedings, and documents of the county court and to utilize such seal for said purposes.

The form and design of such private seal may be similar in form and design to that of the seal of the clerk of circuit court as prescribed by §28.071, F. S., except for the designation of the court inscribed thereon.

Pursuant to §30 of Ch. 72-404, Laws of Florida, §§34.09 and 36.05, F. S., providing for a seal of the county court and a seal of the county judge, respectively, were repealed effective at 11:59 p.m., January 1, 1973.

Pursuant to §11 of Ch. 72-404, Laws of Florida [§34.031, F. S.], the clerk of circuit court is to be the clerk of county court unless otherwise provided by law. Several special acts were passed by the legislature during the 1972 Session creating the separate office of clerk of the county court in several of the counties, but only one such law has made provision for a seal for said clerk or for the court. *See* Ch. 72-435, Laws of Florida. Therefore, with the one exception noted, there exists no

statute authorizing or prescribing a seal for the several county courts or the clerks thereof.

It should be noted at this point that a seal is often required in order for the custodian of the records, in this case the clerk of county court, to attest to copies of orders, records, proceedings, and other official documents; however, a seal is not necessary to a court of record, and the presence or absence thereof is not conclusive of a court's status as a court of record. *See* 21 C.J.S. *Courts* §§5 and 13.

As noted above, the clerk of circuit court shall be the clerk of county court except as otherwise provided by law. *See* §34.031, F. S. No amendment was made to §28.071, F. S., which provides as follows for a seal for the circuit court clerk:

28.071 Clerk's seal.—Each clerk shall provide a seal which shall have inscribed thereon substantially the words:

“Circuit Court”

“Clerk,” “(Name of county)”

which shall be the official seal of the clerk of the circuit court in that county for authentication of all documents or instruments. It may be an imprint or impression type seal and shall be registered with the department of state.

Although the circuit court clerk may be authorized to adopt the circuit court clerk's seal and use the same in his capacity as clerk of the county court, this course might very well prove to be confusing and therefore inappropriate, especially in those counties having a separate office of clerk of the county court. *See* *Stockton v. Powell*, 10 So. 688 (Fla. 1892).

It would appear, however, that §92.12, F. S., would authorize any custodian of official documents or records to adopt and use a private seal if he or the office he holds does not have an official seal.

Since there is, except for the one instance noted, no statutorily authorized or prescribed seal for the custodian of the records of the county court and no seal provided for the court itself or the judge thereof, it would appear that §92.12, F. S., would be applicable in the instant situation.

Therefore, until legislatively or judicially clarified or determined otherwise, it would appear appropriate for those persons who are performing the duties of, or who are serving as, clerk of the county court and who are the custodians of the records, proceedings, and documents of the county court to adopt a private seal for the purpose of authenticating, exemplifying, attesting, or certifying official orders, records, proceedings, and documents of the county court and to utilize such seal for said purposes.

The form and design of the seal are up to the discretion of the individual, but it would appear appropriate, until the judiciary or legislature makes a determination or provision to the contrary, to utilize a design and form of seal similar to that of the seal of the clerk of circuit court as provided in §28.071, F. S. Further, it would appear appropriate for the custodian to register his seal with the Department of State as provided in §28.071, as it regards the registration of the seal of the clerk of circuit court.

073-71—March 22, 1973

STANDARDS OF CONDUCT

APPLICABILITY TO TITLE INSURANCE COMPANY

To: Circuit Court Judge

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General