

#133

IN THE MUNICIPAL COURT OF APPEALS
OF THE CITY OF EL PASO, TEXAS

| | | |
|---------------------|---|-------------|
| MIGUEL A. MARTINEZ, | § | |
| | § | |
| Appellant | § | |
| | § | |
| vs. | § | 90-MCA-2055 |
| | § | |
| STATE OF TEXAS, | § | |
| | § | |
| Appellee | § | |

OPINION

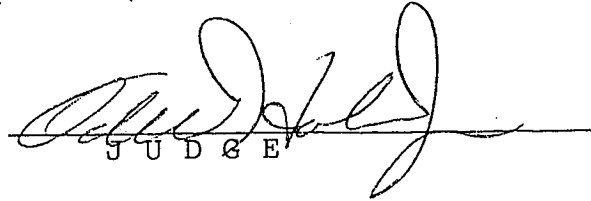
Appellant appeals his conviction in Municipal Court for being in the City Park after hours.

A review of the complaint contained in the file herein reflects that the complaint is fundamentally defective because it was not properly sworn to. The notary did not sign the complaint, but merely stamped it with his seal. This Court has previously held that a fundamental defect in a complaint can be raised on Appeal for the first time and can be judicially noticed by this Court, even if not raised by the Appellant. Dabbagh v. State, 84-MCA-1209 (Mun.Ct.App.), Leeper v. State, 84-MCA-1198, (Mun.Ct.App), and Pantoja v. State, 88-MCA-1881.

In this case, the complaint contains a seal which appears above the name of the affiant, but the notary did not sign the complaint as required by Section 406.016(b) of the Government Code. The notary public's required signature on the document is not synonymous with the affixing of the seal thereto, and are

separate and distinct requirements. The failure of the notary to have signed the complaint in this case renders it fundamentally defective, and the judgment of the Trial Court is hereby reversed, and the complaint ORDERED dismissed.

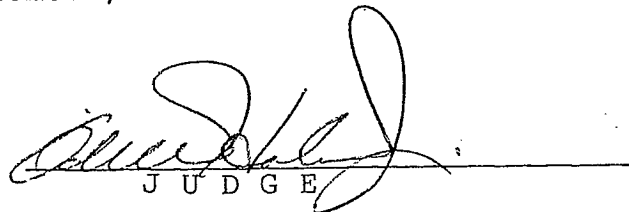
SIGNED this 26 day of September, 1990.


J U D G E

J U D G M E N T

This case came on to be heard, the same being considered, because it is the opinion of this Court that there was error in the Judgment, it is ORDERED, ADJUDGED and DECREED by the Court that the Judgment be in all things reversed and the complaint be dismissed.

SIGNED this 26 day of September, 1990.


J U D G E

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