

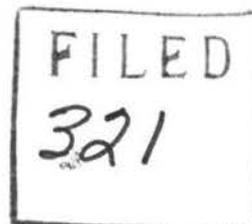
NOTARY PUBLIC:

Section 486.040, RSMo 1969, requires a notary public to have a seal which when used makes an impression on the document on which it is used.

OPINION NO. 321

July 19, 1971

Honorable Warren E. Hearnes
Governor of Missouri
Executive Office
State Capitol Building
Jefferson City, Missouri 65101



Dear Governor Hearnes:

This is in response to your letter of May 27, 1971, requesting an official opinion from this office concerning the question whether a notary public in this state can use a rubber stamp rather than a raised seal.

We assume the rubber stamp to which you refer is a rubber stamp which when used leaves an imprint in ink.

Section 486.040, RSMo 1969, requires each notary public to have a seal. It provides:

"Every notary public shall provide a notarial seal, on which shall be inscribed his name, the words 'notary public', the name of the county or city, if appointed for such city, in which he resides and has his office, and the name of the state; shall designate in writing, in any certificate signed by him, the date of the expiration of his commission. No notary public shall change his seal during the term for which he is appointed, and he shall authenticate therewith all his official acts, and the record and copies, certified by the proper custodian thereof, shall be received in evidence."

Webster's New International Dictionary, Second Edition, describes a seal as "Any device bearing a design so made, as by engraving, that can impart an impression in relief upon a soft tenacious substance, as clay or wax. An impression made by such a device on wax, wafer, or some other tenacious substance capable of being impressed."

Honorable Warren E. Hearnes

We have been unable to find any court decisions which describe the device or instrument used as a seal. The only cases we have found consider whether the document has been properly sealed.

At common law a seal consisted of an impression upon wax or wafer, or some other tenacious substance capable of being impressed, State ex rel. West v. Thompson, 49 Mo. 188; Alt v. Stoker, 127 Mo. 466, 30 S.W. 132.

The sufficiency of the seal of the notary on a deposition taken before a notary public was considered by the court in the case of Meyers v. Russell, 52 Mo. 26. In this case the court stated, l.c. 26:

"The defendant moved to quash a deposition taken in the cause before a Notary Public, because it was not properly attested with the notarial seal, which motion the Court overruled. In this, there was no error. The seal was affixed by an impression on paper, and that was sufficient, it was not necessary that it should be impressed on wax, according to the old common law rule."

It is our view that under Section 486.040, supra, a notarial seal must be a device with the name of the notary public inscribed thereon with the name of the county or city, if appointed for such city, in which he resides, has his office, and the name of the state so that when used it makes an impression upon the document to which it is applied.

In the 73rd General Assembly, Senate Bill No. 169 was introduced to repeal Section 486.040, RSMo, and enact in lieu thereof a new section authorizing the use of a rubber stamp facsimile of a notary seal by a notary public for official acts. This bill was not enacted.

CONCLUSION

It is the opinion of this office that Section 486.040, RSMo 1969, requires a notary public to have a seal which when used makes an impression on the document on which it is used.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Yours very truly,



JOHN C. DANFORTH
Attorney General