

NOTARIES PUBLIC:

Notaries public are not precluded from taking acknowledgments for applicants to the Old Age Assistance Board, even though such Notary be a member of the Board.

8-29

August 29, 1935

Hon. Joseph C. Crain
Prosecuting Attorney
Ozark, Missouri



Dear Sir:

This department is in receipt of your letter of August 20 wherein you make the following inquiry:

"A member of the Old-Age Pension committee of this County has requested me to ask your opinion as to whether or not she, being a member of the Old-Age Pension Commission of this County would be entitled to use her notarial seal in making out affidavits contained in the applications for such pensions, and charge therefor."

The section dealing with the general powers and duties of a notary public is 11739 Revised Statutes Missouri 1929, which is as follows:

"They may administer oaths and affirmations in all matters incident or belonging to the exercise of their notarial offices. They may receive the proof or acknowledgment of all instruments of writing relating to commerce and navigation, take and certify relinquishments of dower and conveyances of real estate of married women; the proof or acknowledgment of deeds, conveyances, powers of attorney and other instruments of writing, in like

cases and in the same manner and with like effect as clerks of courts of record are authorized by law; take and certify depositions and affidavits and administer oaths and affirmations, and take and perpetuate the testimony of witnesses, in like cases and in like manner as justices of the peace are authorized by law; make declarations and protests, and certify the truth thereof under their official seal, concerning all matters by them done by virtue of their offices, and shall have all the power and perform all the duties of register of boatmen."

There is no provision in the above section which would prohibit a member of the County Old Age Assistance Board from acknowledging affidavits in connection with applications for old age pensions.

While the law recognizes a notary public as a public officer, the Constitution and statutes appear to exempt notaries public from the provisions relating to a person holding two offices. This is especially true in Section 18 of Article IX of the Constitution, likewise, Section 12 of Article IV.

In the case of Wood v. City of Kansas City 162 Mo. 303, it was held that a clerk in a municipal office was not estopped from claiming fees for services rendered as a notary public, by having received his compensation in his employment as clerk, and that in the absence of any agreement to the contrary a city is not entitled to fees for services rendered by its employee as a notary public during the city's office hours.

CONCLUSION

The act of administering oaths, applying seal and charging a fee therefor is separate and distinct from the duties of the members of the County Old Age Assistance Board. It is the opinion of this department that there

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is no legal prohibition which would prohibit said member in carrying out the rights and duties as a notary public, regardless of the fact that she is a member of the Board to which the applicant has filed application for old age assistance.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General.

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