

OATHS:  
BOARD OF NURSE EXAMINERS: Section 13479, page 752, Laws of  
1939.

September 21, 1939

Honorable Dwight H. Brown  
Secretary of State  
Jefferson City  
Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion under date of September 14, which reads as follows:

"Please refer to Section 13479, page 752, 1939 Session Laws, regarding State Board of Nurse Examiners, the next to the last sentence of which reads as follows:

'Before entering upon their duties members shall take and file with the secretary of state, the constitutional oath of office required for state officers.'

Will you please give me an opinion regarding whether this means the members of the State Board of Nurse Examiners shall take the oath before the Secretary of State and file the same with him, or whether they may take the oath elsewhere and then file it with the Secretary of State."

Section 13479, page 753, Laws of 1939, reads as follows:

"Upon taking effect of this chapter the Governor shall appoint a board of examiners and registrars of nurses to consist of five members. The majority of such appointees shall be chosen from those who have graduated from an accredited school of nursing and who are actively engaged in or who have had at least three to five years' experience in educational work among nurses. Upon the expiration of the term of office of any member in office the succeeding member or members to be appointed, in any year, shall be chosen by the Governor, with the advice and consent of the senate. The members of the board herein created shall be appointed as follows: One shall be appointed to hold office for one year; two for two years; and two for three years, beginning the first day of June of the present year and until their successors are appointed and qualified and thereafter the governor shall appoint on or before the first day of November of each year persons qualified who are residents and citizens of the State of Missouri as aforesaid, in each class to hold office for three years from the first day of December next ensuing. An unexpired term from whatever reason shall be filled in the same manner as an original appointment and shall be made for the unexpired portion of the term only. Before entering upon their duties members shall take and file with the secretary of state, the constitutional oath of office required for state officers. They may be removed by the governor for misconduct, incapacity or neglect of duties as required by this chapter."

Under date of April 24, 1935, this department rendered an opinion to Mr. R. B. Wilson, County Superintendent of Schools, Jefferson County, holding that a school director under Section 9288, R. S. Mo. 1929, may take an oath of office before a notary public. Section 9288, supra, provided each member may administer the oath of office to each other. This provision is very similar to the statute now to be construed.

Section 1721, R. S. Mo. 1929, provides, unless expressly prohibited, whenever an oath is required to be taken before a particular court or officer, the same may be done before any court or officer authorized to administer oaths:

"Whenever any oath or affirmation is required by law to be taken before a particular court or officer, the same may be done before any other court or officer empowered to administer oaths, unless it is expressly prohibited; and when no court or officer is named by whom an oath may be administered or affidavit taken, the same may be done by any court or officer authorized to administer oaths."

Insofar as we are able to find, the courts in this state have never ruled on this particular question. However, in *State vs. Jones* 154 P. 378, l.c. 380-381, the court construed a statute which is analogous to the one in question. In this case there was a provision similar to the one in question and the court held that such a provision requiring that an oath be administered before certain officers in no way precludes any person authorized to administer oaths from administering same. Furthermore, the court stated that it is the taking of the oath before a properly constituted official that should entitle it to weight and consideration for any purpose rather than its administration by a particular designated official. In so holding, the court said:

"The second assignment of error is based on the action of the trial court in refusing, on motion for a new trial being made by appellant, to strike from the record the affidavits of the ten jurors of the panel before which the defendant was tried, for the reason that the same were sworn to before the prosecuting attorney, deputy clerk of the district court, and chairman of the board of county commissioners-- officers of Benewah county. It is contended

by counsel for appellant that the affidavits were null and void and should not have been considered by the trial court in resisting their motion for a new trial. The question, therefore, arises whether the county officers taking these oaths are authorized so to do, and, if so, can such affidavits be used before the trial court as counter affidavits in opposition to a motion for a new trial?

Section 6055, Rev. Codes, provides:

'An affidavit to be used before any court, judge or officer of this state, may be taken before any judge or clerk of any court, or any justice of the peace, or notary public in this state.'

Section 1983, Rev. Codes, provides:

'Every county officer and every justice of the peace may administer and certify oaths.'

It is insisted by counsel for appellant that section 6055 is a limitation on section 1983, and that no affidavit can be used before any court, judge, or officer of this state, unless it be taken by the officer designated in the former section. These two sections of our statutes have never been construed by this court, as the question is now before us for the first time, but we find that they were taken from the California Codes, and both have received a construction by the Supreme Court of that state.

In the case of Haile v. Smith, 128 Cal. 415, 60 Pac. 1032, it was insisted that section 4118 of the Political Code of California (which corresponds with section 1983, Rev. Codes), gave authority to

officers therein enumerated to administer and certify oaths only in proceedings peculiar to their own department or office. The court said:

'While it is not improbable that this is what the framers of the Code meant, still there is no such restriction in the language used, and there is no such room given for the play of construction as would warrant this court in overturning the judgment by taking that view. Neither do we think that section 2012 of the Code of Civil Procedure (which corresponds with section 6055, Rev. Codes) excludes all officers except those therein mentioned from taking affidavits to be used before a court. \* \* \* It is not confined to affidavits to be used before a court or judge, but includes affidavits to be used before any other "officer of this state"; and we think that this section and all other sections of the same Code on the subject \* \* \* are all cumulative, and that, where a general authority is given an officer to "administer and certify oaths," that authority cannot be limited by judicial construction to particular kinds of oaths.'

Section 1983, Rev. Codes, provides in express terms that every county officer and every justice of the peace may administer and certify oaths. An 'oath' being a solemn appeal to the Supreme Being in attestation of the truth of some statement, and an outward pledge that one's testimony is given under an immediate sense of responsibility to God, it would seem that one taken before any officer authorized under the law to administer it would have the same force and effect as if taken before an officer particularly designated. It is the taking of the oath before a properly constituted official that should entitle

it to weight and consideration for any purpose, rather than its administration by a particularly designated officer."

The law is well settled in this state. The words "take" and "subscribe" are interchangeable when referring to someone taking an oath. In *State ex rel Gott v. Fidelity & Deposit Co. of Baltimore, Maryland*, 298 S. W. 83, l.c. 90, the court said:

"The other assignment against the distribution order is that Judge Estill had no jurisdiction to make it. There are two points under this head; the first being that the record merely recites Judge Estill took the oath of office, when he qualified as judge pro tem., not that he took and subscribed the oath. There is nothing in this contention. The pertinent part of section 2564, R. S. Mo. 1919, is that the special judge 'take and subscribe the same oath that the judge of probate is required to take.' (Italics ours.) The regular probate judge is required by section 2543, R. S. Mo. 1919, to 'take' the oath prescribed by the Constitution for all officers. Section 6, art. 14, of the Missouri Constitution says 'take and subscribe.' The words are obviously used interchangeably by the statutes mentioned, with the same meaning, and the order should be similarly interpreted. At least it can be said, the use of the word 'take' in the order does not amount to an affirmative showing that Judge Estill did not subscribe the oath, and, with the record in this condition, the law presumes he complied with the statute and constitution. *State v. Allen* 267 Mo. 49, 57-8, 183 S. W. 329."

Apparently, the General Assembly in enacting this pro-

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vision never contemplated that the words "take and file" should be so construed as to require a member of this Board to appear before the Secretary of State and no other officer authorized to administer oaths and take or subscribe to the oath of office, but that such members should take or subscribe to an oath as required in Section 13479, supra, before any officer authorized to administer oaths and then file same with the Secretary of State. Regardless of whether or not this construction is correct, it is immaterial in view of Section 1721, supra, and the holding in State v. Jones, supra.

CONCLUSION

Therefore, it is the opinion of this department that members of the Board of Nurse Examiners may take or subscribe to an oath of office as required in Section 13479, supra, before any person authorized to administer oaths in this state, and they are then required to file the same with the Secretary of State as provided in Section 13479, supra.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

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W. J. BURKE  
(Acting) Attorney General  
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