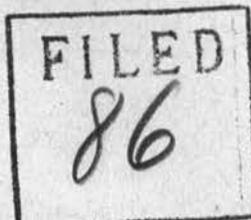


NOTARY PUBLIC) Commission cannot be dated back. No criminal
) liability for acting after expiration of commission.

January 27, 1950

2/2/50

Honorable Christian F. Stipp
Prosecuting Attorney
Carroll County
Carrollton, Missouri



Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"I respectfully request the opinion of your office on a question arising from the following stated facts. On January 30, 1945 a person was issued a commission as Notary Public and he duly qualified for such office. Through error and mistake this Notary Public began taking acknowledgments with the notation 'my commission expires January 30, 1950'. Actually, the commission expired January 30, 1949. Sometime prior to January 30, 1950, the Notary Public started to make application for a new commission and discovered that his old commission expired nearly a year before. During the period from January 30, 1949 to January 30, 1950 he took several acknowledgments. The questions are as follows:

- "1. Can he be issued a commission as Notary Public effective January 30, 1949?
- "2. Has any criminal statute been violated?
- "3. Should said Notary Public make application for a new commission effective whenever the same is issued?"

As far your first and third questions, Section 13360, R. S. Missouri, 1939, provides for the appointment and commission of

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Notaries Public. There is no provision in this statute whereby a commission may be issued and dated as of a date prior to its actual issuance. Therefore, there would be no authority to issue the Notary Public, about whom you inquire, a commission effective January 30, 1949. A new commission would necessary be effective from and after the date of its issuance.

As for your second question, there is no criminal statute expressly covering the conduct involved in this situation. No provision is made in the statutes relative to the appointment and powers of Notaries Public to their criminal liability for reciting an erroneous date for the expiration of a commission or for acting as a Notary after the expiration of a commission. Section 4585, R. S. Missouri, 1939, deals with affixing false jurats, but there is nothing in that section which would cover this situation.

A provision possibly applicable is Section 4347, R. S. Missouri, 1939, which provides, "If any person shall take upon himself any office or public trust in this state, and exercise any power to do any act appertaining to such office or trust, without a lawful appointment or deputation, he shall, upon conviction, be adjudged guilty of a misdemeanor."

There have been no cases in this state construing this provision. Similar provisions in statutes of other states have, however, been construed to require willful usurpation in order to constitute an offense.

In the case of Grebe et al. v. State, 202 N.W. 909, and Kreidler v. State, 24 Ohio St. 22, the court held that assumption of office to constitute usurpation within the meaning of such statute must be such action as imports a willful usurpation of an office. In the case which you have submitted, there would not appear to be any willful usurpation on the part of the Notary Public. He simply was in error concerning the date of the expiration of his commission.

We find no other statutes imposing criminal liability which might be applicable in this situation.

CONCLUSION

Therefore, it is the opinion of this department that when a Notary Public, because of error in computing the date of expiration of his commission, erroneously states in his certificates that his

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commission expires a year later than the date of its actual expiration, and continues to act as a Notary Public during such period following expiration of his commission, he cannot obtain a commission dated back to the date of the expiration of his original commission but must obtain a new commission effective upon the date of its issuance.

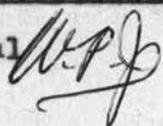
We are further of the opinion that no criminal liability is imposed upon the Notary Public by reason of either his erroneous statement of the date of the expiration of his commission, or by reason of his continuing to act as a Notary Public following the date of the expiration of his commission, where such conduct on his part is not willful.

Respectfully submitted,

APPROVED:

ROBERT R. WELBORN
Assistant Attorney General

J. E. TAYLOR
Attorney General



RRW/feh