

ELECTIONS--Absentee
ballots--where notarized.



Affidavits to absentee ballots may be taken by Notaries Public in the county for which the Notary is appointed and adjoining counties by the terms of Sec. 486.010, V.A.M.S. 1949, and are not confined to the office of a Notary taking such affidavits. A Notary Public cannot take his or her own affidavit to an absentee ballot if he or she is the absent voter.

September 10, 1954

Honorable J. H. Kramer
Representative, Osage County
Linn, Missouri

Dear Mr. Kramer:

This will be the opinion you requested from this office asking our construction of the statutes of this state authorizing the notarization of absentee ballots of an absent voter who is a qualified elector in this state, particularly as to the authority of a Notary Public to notarize such ballots, and, if a Notary Public has authority to notarize such ballots does such Notary have the authority to do so in any place in a county, or is he confined to his own office in the performance of such duties. Your letter requesting an opinion on these questions reads as follows:

"I would like to know whether or not a candidate who is a notary public can lawfully notarize absentee ballots.

"I would also like to know whether he has the authority to do this any place in the county or is he confined to his office?"

Chapter 112, V.A.M.S. 1949, permits a qualified elector of this state, other than a person in military or naval service, to vote an absentee ballot when he or she expects to be absent from the county in which he or she is a qualified elector on the day of an election named in Section 112.101 of said Chapter, or who may from illness or physical disability be prevented from personally going to the polls to vote.

Section 112.050 of said chapter provides, among other things, that: "The absent voter shall make and subscribe to the affidavits provided for on the return envelope for the ballot before any

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officer authorized by law to administer oaths; * * *."

Notaries Public may, among other privileges and duties which they are authorized to perform, as prescribed by statute, take affidavits or affirmations. Section 486.020, defining the powers and duties of Notaries Public under Chapter 486, V.A.M.S. 1949, including such authority, reads, in part, as follows:

"They may administer oaths and affirmations in all matters incident or belonging to the exercise of their notarial offices. * * *"

We have observed from the terms of the statute hereinabove noted that the qualified elector as an absent voter is required to make the affidavit provided for on the return envelope containing his or her ballot before any officer authorized by law to administer oaths. We have also seen from the terms of said Section 486.020 that Notaries Public may administer oaths and affirmations. These statutes themselves provide no exceptions or exemptions among officers to withhold from them the power to administer oaths because they are candidates for office or for any other reason. Such officers are given unlimited power and authority by statute to administer oaths and affirmations. That power is not affected in anywise by such officer being a candidate for public office or otherwise.

Considering the terms of the statutes quoted, supra, it is the opinion of this office, answering your first question, that a Notary Public who is a candidate for public office may lawfully take the affidavits of all absentee ballots submitted to him or her for such purpose and fully notarize the same, except his own ballot, in case he is an absent voter. We do not believe a Notary Public or any other officer authorized to administer oaths or to take acknowledgments may lawfully administer an oath or take an affidavit or take an acknowledgment to any instrument in writing in any proceedings where he or she has an interest as a party therein or thereto.

We have observed from the terms of the statutes so quoted that a notary public may legally notarize the absentee ballot of an absentee voter, other than his or her own ballot, if such absentee voter is a candidate. This opinion, however, is passing only on and approving the legality of such notarizations and not the propriety of such action by a candidate. In order to avoid complications and embarrassments of any character it would be best for a candidate, if a notary public, not to notarize absentee ballots of absent voters.

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We are enclosing a copy of an opinion issued by this office to Honorable Harry P. Rosecan, Prosecuting Attorney, City of St. Louis, Missouri, dated November 21, 1934, holding that a Notary Public is disqualified from performing official acts in which he has any personal or beneficial interest. We believe said opinion of said date will aid in the clarification of the questions here being considered as to the exercise of powers by Notaries Public granted to them by statute.

Considering your second question as to whether a Notary Public is required to remain in his office in the performance of his official privileges and duties, especially with respect to taking affidavits to absentee ballots, or whether he has authority to perform such duties, including the taking of such affidavits in any place in the county, we refer you to the provisions of Section 486.010, V.A.M.S. 1949, on the subject of Notaries Public. That section provides in express terms that the territory in which a Notary Public is authorized to act, includes the county for which he may be appointed and adjoining counties. Said section so providing reads, in part, as follows:

"The governor shall appoint and commission in each county and incorporated city in this state, as occasion may require, a notary public or notaries public, who may perform all the duties of such office in the county for which such notary is appointed and in adjoining counties. * * *."

This section provides, as will be observed, that any and all of the duties of the office of Notary Public may be performed by the Notary in such counties as are specified therein.

By the terms of said Section 486.010, a Notary Public is not confined to his office in the performance of the privileges and duties which pertain to his office. He is authorized by said section to perform such duties in his own and in adjoining counties.

CONCLUSION

Considering the premises, it is the opinion of this office that:

1. A candidate who is a Notary Public can lawfully notarize absentee ballots of absent voters except his own in case he or she is the absentee voter making the affidavit.

2. It is the further opinion of this office that a Notary Public has the authority to notarize absentee ballots any place in the county and is not confined to his office in so doing.

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3. It is the further opinion of this office that, while it is legal for a candidate for office, who is a notary public, to take the affidavits of absentee voters to absentee ballots; yet, in order to avoid improprieties and embarrassments of any character, it would be best for him or her not to do so.

The foregoing opinion which I hereby approve, was prepared by my assistant, Mr. George W. Crowley.

Yours very truly,

JOHN M. DALTON
Attorney General

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