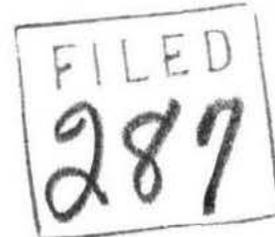


NOTARY PUBLIC: County Clerk to certify copies of the  
Notary Public's appointment under Senate  
Bill No. 259

Opinion No. 287

September 29, 1965

The Honorable James C. Kirkpatrick  
Secretary of State  
Capitol Building  
Jefferson City, Missouri



Dear Mr. Kirkpatrick:

Recently you requested an opinion from this office as follows:

"Senate Bill No. 259 which passed the General Assembly and has been signed by the Governor provides that an appointed Notary Public may, in addition to performing the duties of his office in his home county and adjoining counties, also act in an official capacity 'in any or all other counties of the state in which he has previously filed a certified copy of his appointment with the county clerk of that county.'

"The question has now arisen as to the proper person to prepare the certification to be filed with the county clerk of the county in which he performs such official acts.

"Is the certification to be prepared by the county clerk of his home county, who finally delivers the Notary Public Commission, or is it the duty of the Secretary of State who prepares the Commission at the authorization by the Governor?

"For your convenience we are attaching a copy of Senate Bill No. 259 and will appreciate your advices in this matter."

Section 486.010, RSMo 1959, authorizes a notary public to perform the duties of his office in the county for which such notary is appointed and in adjoining counties. Senate Bill No. 259, 73rd General Assembly, amends said section to provide:

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" \* \* \* and in any or all other counties of the state in which he has previously filed a certified copy of his appointment with the county clerk of that county. \* \* \* "

The question you have submitted relates to who should certify the appointment. This act becomes effective October 13, 1965.

Section 486.070, RSMo 1959, provides in part that whenever a commission is issued to any person as a notary public, the Secretary of State shall forward such commission to the county clerk and, in the City of St. Louis, to the circuit clerk who shall not deliver the commission until such person shall give bond and take and subscribe to the oath of office as required by Section 486.050.

Section 486.050, RSMo 1959, provides:

"Every notary, before entering upon the discharge of the duties of his office, shall take the oath of office, which shall be indorsed on his commission, shall give bond to the state in the sum of two thousand dollars, except in counties of the first class, in which they shall give bond in the sum of five thousand dollars, with at least two good and sufficient sureties, to be approved by the clerk of the county county (in the city of St. Louis such approval shall be by the clerk of the circuit court), which commission, oath and bond shall be filed and recorded in the office of said county clerk, and in the city of St. Louis in the office of the circuit clerk. Said bond, after having been so recorded, shall be filed in the office of the secretary of state, and may be sued on by any person injured; but no suit shall be instituted against any such notary or his sureties more than three years after such cause of action accrued. Sureties on the bond of any notary may be discharged from all future liability on such official bond, by petition in writing addressed to the county court (in the city of St. Louis to the circuit court), by conforming to the requirements, with the same rights and remedies as provided by sections 433.140 to 433.220, RSMo, relating to sureties."

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Section 486.060, RSMo 1959, provides:

"On the written statement of any citizen, verified by oath, that the bond of any notary has become or is insufficient, said county clerk, and in the city of St. Louis the circuit clerk, shall cite such notary to appear before him, and to give a new and sufficient bond. If said clerk shall find his bond to be insufficient, he shall order a new bond to be given, and if such new and sufficient bond shall not be given within ten days after said order, such notary public shall forfeit his office, and thereafter cease to exercise the powers and duties thereof."

Section 51.140, RSMo 1959, provides in part that the county clerk shall have power and is authorized to administer oaths and affirmations in all matters and proceedings incident to the exercise of the powers and duties of his office and incident to the powers and proceedings of the county court and when required, shall affix his jurat and seal of the county court of which he is clerk.

Before a notary public enters upon the discharge of his official duties, he must indorse his oath on the commission, give bond subject to the approval of the county clerk and he must file his commission, oath and bond with said clerk where it is there recorded by the clerk. After the bond is recorded by the county clerk, it is to be returned to the Secretary of State to be filed therewith. Under Section 486.060, supra, it is possible that a notary may have forfeited his office for failure to comply with the order of the county clerk to file a new bond. Assuming that the county clerk has proceeded against a notary under the above statute and that the notary has forfeited his office for failure to comply with the orders of the county clerk, there is not statute requiring the county clerk to notify the Governor or the Secretary of State of this fact; only the records of the county court would reveal this fact.

While the Legislature did not clearly spell out who is authorized to issue certified copies of the "appointment", yet considering all of these duties placed upon the county clerk and the fact that the notary's public commission has to be filed and recorded in the office of the county clerk as well as the other powers vested in the county clerk, we believe the Legislature in Senate Bill No. 259 intended and impliedly authorized the county clerk of the county where the original commission is filed, to prepare the certified copies of the appointment provided for in Senate Bill No. 259.

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CONCLUSION

It is the opinion of this office that it is the duty of the county clerk of the county where the original commission of a notary public is filed and recorded, to prepare certified copies of said appointment to be filed in any or all other counties of the state in which county or counties he may perform the duties of a notary public. This law is effective October 13, 1965.

This opinion which was prepared by my assistant, Mr. Moody Mansur, is hereby approved by me.

Very truly yours,

  
NORMAN H. ANDERSON  
Attorney General