FACSIMILE SIGNATURE: A facsimile signature of an officer of a
POWER OF ATTORNEY: surety company certifying as to the correctness of a power of attorney is a valid signature if the officer intends it to be his signature and he has been authorized by the board of directors to use a facsimile signature and the state in which the power of attorney is executed recognizes such signatures as being valid.

January 26, 1960

FILED
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Honorable Omer H. Avery
Member, Missouri Senate
21st District
Troy, Missouri

Dear Senator Avery:

This is in response to your request of November 14, 1959, for an opinion, which request reads in part as follows:

> "A question has arisen concerning the legality of a power of attorney containing the facsimile signature of an officer of the company certifying to the correctness of the instrument. I will appreciate your consideration of the matters herein set forth and the advice of your office regarding same.
>
> "Under the procedure used by Travelers, bond writing agents operate under powers of attorney which are executed by an officer at the Home Office in Hartford. Each agent is then furnished with multiple copies of this power certified to at Hartford by facsimile signature (see specimen power enclosed). One such certified copy is attached to each bond as it is executed, to evidence the authority of the agent involved. The Company uses more than 250,000 of these certified copies annually. Other large insurers, such as, U.S.F. & G., I understand, have the same problem. Because of the large number involved, it is quite important that these powers be accepted universally. In most instances they are accepted without question. It is my view that these powers should be accepted.

"A power of attorney is an instrument which stems in contract law and hence if valid where executed should be valid everywhere. Travelers is a Connecticut corporation. It executes a valid legal power in Connecticut to one of its agents and certifies it there. Under Connecticut law the use of the facsimile signature is legal, and such signature where it is so intended is the equivalent of the original signature of the subscriber. The facsimile signature is authorized by the Company as evidenced by resolution of the Board of Directors and authorized by the By-Laws of the Company. The last subscriber, by facsimile signature, certifies as to the correctness of the power of attorney. I am advised that it is to that signature that an objection has been made. No objection is raised to the fact that the signatures of the Secretary of the Company and of the Notary Public are printed. If such powers of attorney must be signed individually, it would require the service of numerous clerks and assistant secretaries and would involve delays and unwarranted expense, all of which would have to be passed on in the form of enhanced premiums.

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"Until recently, bonds with power of attorney prepared as this one were accepted by all County officials, but now one County official feels that where, if there were a default on a bond, it would be necessary for the County to allege and prove that the carrier is estopped to deny the facsimile signature. Estoppel, of course, is a matter of defense, and no large insurance carrier would risk resisting its responsibility by challenging the validity of the facsimile signature on documents emanating from that Company. Of course, having accepted the premium for the bond, the Company would be estopped, regardless. Indeed, if a surety

> company were to attempt to repudiate its obligation and deny its own facsimile signature, the Superintendent of Insurance would no doubt threaten immediate reprisal. Anyone having experience in this field will realize how completely effective such action would be.
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> * * * * * * *
>
> "I would greatly appreciate your consideration of the matters set forth in this letter, and an opinion of your office as to the legality of powers of attorney executed and certified to by facsimile signature of an officer at the home office."

In connection with the question posed in your request, it is interesting to note that Missouri, by statute, now approves the use of facsimile signatures in certain situations and on certain documents.

The 70th General Assembly enacted the "Uniform Facsimile Signature of Public Officials Law" which may be found in Sections 105.273 to 105.278, inclusive, V.A.M.S. Sections 105.273 and 105.274 of the above-cited law read as follows:

> 105.273
>
> "(1) 'Public security' means a bond, note, certificate of indebtedness, or other obligation for the payment of money, issued by this state or by any of its departments, agencies or other instrumentalities or by any of its political subdivisions:
>
> "(2) 'Instrument of payment' means a check, draft, warrant or order for the payment, delivery or transfer of funds:
>
> "(3) 'Authorized officer' means any official of this state or any of its departments, agencies, or other instrumentalities or any of its political subdivisions whose signature to a public security or instrument of payment is required or permitted;

> "(4) 'Facsimile signature' means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer." (Emphasis ours)
>
> 105.274.
>
> "Any authorized officer, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:
>
> "(1) Any public security, provided that at least one signature required or permitted to be placed thereon shall be manually subscribed; and
>
> "(2) Any instrument of payment.
>
> "Upon compliance with sections 105.153 to 105.158, by the authorized officer, his facsimile signature has the same legal effect as his manual signature."

We have made a search of the statutes but have been unable to find one which sets out the form and requirements for a power of attorney. Chapter 442, RSMo 1949, which pertains to title to real estate and the conveyance thereof, has some sections which relate to powers of attorney to convey title or transfer an interest in real estate. For example, Section 442.360 provides that every power of attorney containing a power to convey title to real estate shall be acknowledged, certified and recorded. None of the provisions of Chapter 442, including Section 442.360, specify that the signatures be actual "wet ink" signatures.

Section 490.570, RSMo 1949, does not require that powers of attorney be acknowledged and certified in the same manner as deeds conveying or affecting real estate but provides that they may be acknowledged or proved and certified in such manner, and if they have been, they may be read in evidence without further proof of the execution thereof. Likewise this section makes no requirement with respect to the signature on the power of attorney or acknowledgment.

The statutes relating to bonds for public officials and performance bonds make no requirement as to the power of attorney executed by surety companies. Likewise, we have been unable to find any Missouri cases which have considered the use of the facsimile signatures by the officer of a surety company certifying to the correctness of the power of attorney. It is pointed out that while a power of attorney is usually attached to a bond, it is not a necessary part thereof but is attached thereto as evidence of the authority of the agent or attorney at fact.

Section 1.020 (17), RSMo 1949, provides that where a statute uses the words "written, in writing, and writing word for word" that those words shall include printing, lithographing, or other mode of representing words and letters. Section 1.020 (17), supra, reads as follows:

> "(17) 'Written' and 'in writing' and 'writing word for word' shall include printing, lithographing, or other mode of representing words and letters but in all cases where the signature of any person is required, the proper handwriting of such person, or his mark, shall be intended;" (Emphasis ours)

We do not believe that the above-quoted section can be interpreted to require that the certification of the officer of a surety company as to the correctness of the power of attorney must bear the actual "wet ink" signature of the officer.

In the absence of a statute requiring the actual "wet ink" signature of a person, the cases of Missouri hold that facsimile signatures may be valid and binding.

In City of Maplewood v. Johnson, 273 S.W. 237, l.c. 239, certain instruments had been signed with a rubber-stamp signature. The court, in its opinion, said:

> "* * * This leaves the rubber stamp signature of Wm. F. Riley Construction Company intact, and it is a well settled rule of law that any mark intended as a signature acts as such.

* * * * * *

> "[6] III. The name of the corporation was rubber stamped on the tax bills. Whether the president or the secretary of the contractor affixed it, the record does not show. It does show, however, that the president was present, and it may be inferred that he saw that it was so affixed, and consented and intended that it act as the signature of the corporation in the matter of the assignment."

The court, in Dinuba Farmers Union Co. v. Anderson Gro. Co., 193 Mo. App. 236, 247, in considering the requirements of the statute of frauds, said:

> "* * * Indeed, the name of the party to be charged may be either in writing or in print or by stamping the name upon the memorandum * * *."

In Horner v. Mo. Pac. R'y. Co., 70 Mo. App. 285, 291, which involved a statute providing, among other things, that bills of lading may be made negotiable by written endorsement thereon, the court said:

> " * * * The word writing, in law, not only means words traced with a pen or stamped, but printed or engraved or made legible by any other device. * * *"

The courts of many other jurisdictions have also held that a signature may be any mark, printing, writing, or stamping which is intended to be a signature. Hill v. United States, 288 Fed. 192, 193; Toon v. Wapinitia Irr. Co., 243 Pac. 555; Hamilton v. State (Indiana), 2 N.E. 299; Ardery v. Smith (Indiana), 73 N.E. 841.

Hagen v. Grisby, 155 NW 3, involved a statute requiring summonses to be subscribed by the plaintiff or his attorney. The Supreme Court of North Dakota held that a summons bearing the typewritten name of the plaintiff's attorney complied with the statute and was valid.

In Costilla Estates Development Company v. Mascarenas (N. Mexico), 267 Pac. 74, the defendant offered as a defense in an action in ejectment the judgment of another court establishing

his title against plaintiff. One of the objections raised to the introduction into evidence of the judgment was that the signature of the clerk thereon was made by rubber stamp. The statute involved required the clerk to "sign his name" on documents filed by him. The court held that the rubber stamp signature was sufficient, stating at page 77:

> "This statute does not require the clerk to write his name; only that he sign it. Generally a signature, if adopted as such, may be printed, lithographed, or typewritten, as well as written. 36 Cyc. 443. The decisions there collected show that signatures not autographs are held sufficient to satisfy a variety of statutory and other requirements. * * *"

The general rule seems to be that a corporation may adopt or authorize the execution of documents by a typewritten, printed or rubber stamp signature, and, if the adoption or authority is shown, the corporation is bound by a signature in such form. 7 Fletcher Cyclopedia Corporation, Sec. 3026.

In 11 C.J.S. 403 (Sec. 16) wherein is discussed the manner and form of signatures on a bond, it is stated as follows:

> "Independent of any statutory requirement, the manner and form of the signature, when made, is immaterial, provided it is made by the obligor for the purpose and with the intention of binding himself. If made with this intention, the signature may consist of a mark or sign, and in some jurisdictions this rule is in effect prescribed by statute, or it may consist of a printed facsimile of the makers autograph adopted by him for that purpose, * * *."

The capacity to give a power of attorney and the general validity of such a power are essentially contractual. Hence, it is the general rule that, in the absence of a statute to the contrary, the law of the place where the contract creating the power of attorney is entered into governs questions connected therewith. Restatement of Conflicts of Law, Sec. 345; 11 Am.Jur. 371, Section 84.

Honorable Omer H. Avery

In your letter you mentioned that the agents for Travelers Insurance Company operate under powers of attorney executed by an officer of the company in the home office in Hartford, Connecticut. You further advised that the certification as to the correctness of the power of attorney bears a facsimile signature which has been authorized by the board of directors of the company. The State of Connecticut recognizes the validity of facsimile signatures. See In re. Deep River National Bank, 73 Conn. 341, 47 Atl. 675; Kilday v. Schancupp, 91 Conn. 29, 98 Atl. 335; Max Amos Machine Co. v. International Assn. of Machinists, 92 Conn. 297, 102 A. 706. Therefore, as a power of attorney bearing a facsimile signature is valid in the State of Connecticut where it is executed, under the general rule mentioned hereinabove, the power of attorney would also be valid in other states.

For your information we are enclosing herewith a copy of an opinion of the Attorney General to Francis M. Cook, Regional Attorney, Department of Labor, dated September 18, 1957, in which it was held that a facsimile signature authorized by a party to a contract is binding upon such a party.

CONCLUSION

Therefore, it is the opinion of this department that a facsimile signature of an officer of a surety company certifying as to the correctness of a power of attorney is a valid signature if the officer intends it to be his signature and he has been authorized by the board of directors to use a facsimile signature and the state in which the power of attorney is executed recognizes such signatures as being valid.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Calvin K. Hamilton.

Yours very truly,

John M. Dalton
Attorney General

CKH:mlw,vlw

Enc. Opinion to -
Francis M. Cook
September 18, 1951