NOTARY PUBLIC: Notary Public commissioned in the State of Missouri not permitted under the law to attest his own signature.

18-24

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Honorable Harry P. Rosecan
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St.Louis,Missouri

Dear Sir:

Your letter requesting an opinion is as follows:

"Will you please advise at your earliest convenience as to whether or not a notary public commissioned in the State of Missouri is permitted under law to attest his own signature?

Thanking you, I am."

Section 11739 R. S. Mo. 1929, provides the powers and duties of a notary public in Missouri and provides:

"They may administer oaths and affirmations in all matters incident or belonging to the exercise of their notarial offices. They may receive the proof or acknowledgment of all instruments of writing relating to commerce and navigation, take and certify relinquishments of dower and conveyances of real estate of married woman; the proof or acknowledgment of deeds, conveyances, powers of attorney and other instruments of writing, in like cases and in the same manner and with like effect as clerks of courts of record are authorized by law; take and

> certify depositions and affidavits and administer oaths and affirmations,and take and perpetuate the testimony of witnesses, in like cases and in like manner as justices of the peace are authorized by law; make declarations and protests, and certify the truth thereof under their official seal, concerning all matters by them done by virtue of their offices,and shall have all the power and perform all the duties of register of boatmen."

The general question presented by your inquiry has never been exactly decided by the Missouri Courts,but we do find that where one is named as a party to a deed he cannot take and certify the acknowledgment of said deed. In the case of Dail v. Moore (1873) 51 Mo. 589, the court said,when reviewing assignments of errors in the trial court, at l. c. 591:

> "The court correctly decided that the acknowledgment of the deed of trust to Stephens, having been taken by himself, was void. This point was expressly held in Stevens v. Hampton, 46 Mo. 404."

Again in German American Bank v. Garondelet Real Est. Co. 150 Mo. 570, l. c. 576, 51 S. W. 691, the court said:

> "The notary before whom the deed was acknowledged was Charles F.Vogel,and when the deed was presented for record, he appeared therein as the grantee, and it was so recorded. The wording of such a deed was improper, and the record thereof does not impart constructive notice to subsequent purchasers, under Section 2419, R. S. Mo. 1889."

46 Corpus Juris 518, Section 30, announces the following doctrine:

> "The general rule is that a notary cannot certify to an act in a matter in which he has a personal interest, although the contrary doctrine has been announced. The nature of an interest which will disable him to act cannot be stated in any general rule, but must be determined in each case from the peculiar facts and circumstances of that case."

The Missouri cases cited above, it is to be noted, deal only with acknowledgment to deeds and do not deal with attestations generally. The right of a notary to attest under the statutes of Missouri, is not limited to deeds. Your query is not limited to acknowledgments to deeds. On the other hand, the rule in Missouri voiding an acknowledgment to a deed, where the notary swears himself, follows the common law rule laid down generally as to "attestation." The common law is thus stated in Seal v. Claridge 7 QB 516, (quoting from Donivan v. St. Anthony 8 N. D. 585,l.c.589, 80 N. W. 772, 73 Am. L. R. 779, 46 L. R. A. 721:)

> "Lord Selbourne, in answer to an inquiry as to the meaning of the word 'attestation,' said: 'The word implies the presence of some person who stands by, but is not a party to the transaction,' and elsewhere in the same case used this language: 'I was at first surprised that no authority could be found directly in point, but no doubt, the common sense of mankind has always rejected the notion that a party to a deed could also attest it.' "

CONCLUSION.

It is the opinion of this office that the common

law rule prevails in Missouri as to a notary attesting his own signature, and that not only in the taking of acknowledgements to deeds but also in any other attestation by a notary, allowed by statute, it is not legally allowable for a notary to represent himself and attest to his own signature. The notary's statutory right to attest is a right to represent a client other than himself, and when he pretends to substitute himself for a client the attestation resulting therefrom is void and of no legal consequence.

Respectfully submitted,

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