

OFFICE OF THE ATTORNEY GENERAL



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Honorable Jim Bennett
Office of the Secretary of State
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Notary Public-- Term of
Office - Dates - Bonds

Discussion of the appoint-
ment, commission, qualifica-
tions, bond and seal of
notaries public.

Dear Mr. Bennett:

This opinion is issued in response to your request for
an opinion from the Attorney General.

QUESTION 1

Sections 36-20-1 and 36-20-30 of the
Code of Alabama 1975, state that a com-
petent number of notaries public shall be
"appointed and commissioned by the pro-
bates judges. . . and shall hold office
for four years from the date of their
commission."

Must the date of appointment
and the date of commission be the
same date? If not, is it the bond-
ing date, or is it some other factor
that determines which date is the
appointment and which date is the
commission?

FACTS, LAW AND ANALYSIS

Code of Alabama 1975, § 36-20-1 provides:

"A competent number of notaries public for each county shall be appointed and commissioned by the probate judges of the several counties of the state and shall hold office for four years from the date of their commissions. . . ."

Code, § 36-20-30 provides:

"A competent number of notaries public for the state at large shall be appointed and commissioned by the probate judges of the several counties of the state and shall hold office for four years from the date of their commission."

A commission has been defined in the following manner:

"A commission may be defined as a written authority from a competent source given to the officer as his warrant for the exercise of the powers and duties of the office to which he is commissioned. . . ."

63A Am.Jr.2d, "Public Officers and Employees," § 121.

A commission is the written and formal evidence of the appointment. Draper v. State, 175 Ala. 547, 57 So. 772 (1911); 63A Am.Jur.2d, supra. Thus, the commission is issued when the appointment is made.

CONCLUSION

The date of the appointment and date of commission are the same date. The date on which the term of a notary public commences under § 36-20-1 and § 36-20-30 is the date on which the appointment is made and the commission is issued by the probate judge.

QUESTIONS 2, 3, AND 4

Sections 36-20-3 and 36-20-31 state that notaries must give bond with sureties and that the bond must be "executed, approved, filed, and recorded in the office of the judge of probate : . . before they may enter on the duties of such office."

If a citizen obtains a bond in November 1992 but does not apply for the notary commission in the probate office until April 1995, should the effective date for the four-year notary term begin with the date of application at the probate office or with the date of the bond?

If the effective date begins with application in the probate office, then are notarizations legal if done before that date but while bonded?

If the notary term cannot begin until application is in the probate office, then at the time of that application must the citizen show proof that the bond has been extended before receiving the appointment/ commission from the probate office?

FACTS, LAW AND ANALYSIS

Considering the discussion and conclusion to Question 1, the effective date of the four-year notary term for the individual in question would be the date on which the individual is commissioned as a notary public.

Code of Alabama 1975, § 36-20-11 makes it a misdemeanor for an individual to perform a notarial act without a commission. Under Code, § 36-1-2, the official acts of a person in possession of an office and exercising the functions thereof are valid in respect to interested or affected persons. If an individual has never received a purported

appointment as a notary public, but only has a bond, it would appear that he has no claim to possession of that office, and his official acts would not be valid. However, this is a determination which must ultimately be made by a court of law.

As to whether an individual must exhibit proof of a bond before appointment as a notary, Code, § 36-20-3 states:

"Notaries public must give bond with sureties, to be approved by the judge of probate of the county for which they are appointed, in the sum of \$10,000.00, payable to the state of Alabama and conditioned to faithfully discharge the duties of such office so long as they may continue therein or discharge any of the duties thereof. Such bond must be executed, approved, filed and recorded in the office of the judge of probate before they enter on the duties of such office."

It appears that an individual desiring to become a notary public has to show evidence of a bond for the term of the appointment before appointment. He must obtain a bond and file such bond with the office of the probate judge before entering the duties of the office. The filing of an official bond is generally regarded as a necessary prerequisite to full title to an office. 67 C.J.S., "Officers," § 47.

CONCLUSION

If an individual has never received an appointment as a notary public, but only has a bond, it would appear that he has no claim to possession of that office, and his official acts would not be valid. However, this is a determination which must ultimately be made by a court of law.

An individual desiring to become a notary public has to show evidence of a bond for the term of the appointment before appointment.

QUESTION 5

Must a notary use his or her notary seal for the notarization to be official? If so, must the seal be embossed, or may it be stamped onto the document?

FACTS, LAW AND ANALYSIS

Code of Alabama 1975, § 36-20-4 states regarding notaries for each county:

"For the authentication of his official acts, each notary must provide a seal of office, which must present, by its impression, his name, office, state and the county for which he was appointed."

Code of Alabama 1975, § 36-20-32 provides regarding notaries for the state at large:

"For the authentication of his official acts, each such notary must provide a seal of office which must present, by its impression, his name, office and the state for which he was appointed."

It has been determined that a notarial seal is not necessary to authenticate the certificate of acknowledgement of an Alabama notary, and an instrument which on its face purports to be under seal will be so considered although there is no scroll opposite the signature. Dawsey v. Kirven, 208 Ala. 446, 83 So. 338 (1919).

It appears that Code, § 36-20-4 and § 36-20-32 require that a notary's seal be embossed so as to leave an impression on the document so notarized. A stamp does not appear to be sufficient for this purpose.

CONCLUSION

A notarial seal is not necessary to authenticate the certificate of acknowledgement of an Alabama notary. Such seal when used must be embossed.

QUESTION 6

May a notary notarize a relative's signature? May a husband or wife notarize a spouse's signature?

FACTS, LAW AND ANALYSIS

My research does not reveal any law that prohibits a notary public from notarizing a relative's or spouse's signature. However, the better practice would be for a notary public to refrain from notarization of the signature of his or her spouse or immediate family member so the impartiality of the notary public would not be a issue should the authentication of the document be questioned.

CONCLUSION

The best practice is that a notary public should not notarize the signature of his or her spouse or immediate family member.

QUESTION 7

Does residency determine where one must apply to be a notary? For example, may a resident of Pike County who works and notarizes documents in Bullock County apply to become a state-at-large notary in Bullock County? May that same Pike County resident apply to become a county notary for Bullock County?

FACTS, LAW AND ANALYSIS

This office ruled in an opinion found at Biennial Report of the Attorney General, 1926-1928, p. 632, that a resident of one county cannot qualify as a notary public in another county.

In an opinion of the Attorney General found at Quarterly Report of the Attorney General, Vol. 20, p. 56, Governor,

use, etc. v. Gorden, 15 Ala. 72 was quoted as recognizing a notary public as a public officer of the county.

Furthermore, Code, § 36-20-2 provides that notaries public vacate their office upon removal from the county.

CONCLUSION

An individual must apply in the county of his residency to become a notary public.

QUESTION 8

May an out-of-state resident who works in Alabama apply to be a notary in the Alabama county in which he/she works?

FACTS, LAW AND ANALYSIS

This office determined in an opinion to Honorable W. Mack Price, Probate Judge, Barbour County, dated July 31, 1995, A.G. No. 95-00274, that a person who resides in another state, but who works in Alabama, cannot be appointed and commissioned as a notary public in this state. It was deduced in that opinion that Code, § 36-2-1(a)(2) prohibits individuals who have not been inhabitants of the state, county, district or circuit for the period required by law from becoming an officer in this state, and that this requirement is applicable to notaries public.

CONCLUSION

A person who resides in another state, but who works in Alabama, cannot be appointed and commissioned as a notary public in this state.

QUESTION 9

What are the minimum qualifications for a person to become a notary? Specifically, does one have to be a registered voter?

FACTS, LAW AND ANALYSIS

In keeping with the decision of the Alabama Supreme Court in Babcooke v. Duncan, 486 So.2d 431 (Ala. 1986) and Opinion of the Attorney General to Honorable Thomas A. Snowden, Jr., Judge of Probate, Shelby County, dated February 21, 1992, A.G. No. 92-00173, an individual who meets all the other legal requirements for commission as a notary public, does not have to be a qualified elector. The Alabama Supreme Court in Babcooke v. Duncan, supra, ruled that the requirement found at Code, § 36-2-1(a)(1) that those qualified to hold office in this state be qualified electors, was a denial of equal protection as applied to individuals applying to become notaries public.

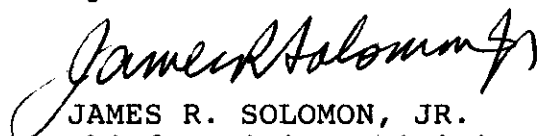
CONCLUSION

An individual who meets all the other legal requirements for commission as a notary public does not have to be a qualified elector.

I hope this sufficiently answers your questions. If our office can be of further assistance, please contact James R. Solomon, Jr., of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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