June 25, 1975

Opinion No. 75- 267

The Honorable Robert F. Bennett
Governor of Kansas
2nd Floor - State Capitol Building
Topeka, Kansas   66612

Dear Governor Bennett:

You advise that you have recently received an application
for a notary public commission from an individual who is a
resident of Oklahoma, but employed at Coffeyville, Kansas.
It has been the practice of previous governors, you indicate,
to deny such applications by nonresidents, and you request
my opinion whether nonresident individuals are eligible for
notary public commissions.

Prior to amendment by section 4 of 1975 House Bill 2388,
K.S.A. 53-104 provided in pertinent part thus:

> "Such commission, bond and oath shall be
> recorded in the office of the clerk of the
> district court of the county in which the
> notary public shall reside, and immediately
> thereafter said bond and oath shall be
> transmitted to the secretary of state, and
> by him filed and properly indexed in his
> office."

This requirement impliedly limited appointments to Kansas
residents. In addition, prior to amendment, K.S.A. 53-101
provided for the appointment of both local notaries public
and state notaries public. The former were authorized to
perform notarial acts "within the county for which appointed
and in any adjoining county of this state." State notary
publics were authorized to exercise notarial acts anywhere
within this state. K.S.A. 1974 Supp. 53-107.

The distinction between state and local notaries public is
abolished by the 1975 enactment. Section 1 thereof provides
in pertinent part only as follows:

> "Any person who is at least eighteen (18)
> years of age shall be eligible to be appoint-
> ed as a notary public as provided in this
> act."

No requirement of state citizenship or residence is prescribed.
Accordingly, there is no statutory ineligibility by the applicant
in question for a notary public commission accruing solely from
the fact of Oklahoma residence.

A Kansas notary public commission has, of course, no extra-
territorial application. It confers powers which may be exer-
cised only within the territorial jurisdiction of the state.
Although I perceive no legal ineligibility of the applicant on
the ground of nonresidence alone, I must invite your attention
to section 5 of 1975 House Bill 2388, which commences thus:

> "Every notary public shall provide
> a notarial seal containing such notary's
> name, county of residence, and the words
> 'notary public' . . . ."

A seal which bears the county of residence of an Oklahoma
residence possibly may not on its face indicate that the
notarial authority derives from the law of Kansas, and that the
authority conferred by the commission extends only to notarial
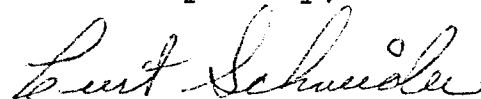acts exercised in this state.

In *In re Huron*, 58 Kan. 152 (1897), the court stated that a
notary public is "simply an executive officer, who is chosen
with reference to the duties to be performed by officers of
that class." 58 Kan. at 154. There being no constitutional
or statutory prescription of residence as a qualification for
appointment to this particular office, we cannot but conclude
that the applicant is legally eligible for appointment. Because
under Kansas law, the notarial seal must state the county of

residence of the notary public, it is entirely possible that
seals adopted by nonresident persons appointed as notaries
public under Kansas law will lead to confusion, inviting
subsequent questions concerning the validity of particular
notarial acts performed by persons holding Kansas commissions,
but using seals describing residence in another state.

These observations are offered for your assistance in acting on
on the application before you.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: The Honorable Elwill M. Shanahan
     Secretary of State
     2nd Floor - State Capitol Building
     Topeka, Kansas 66612