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 appointed 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 exercised 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 the application before you.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

cc: The Honorable Elwill M. Shanahan
Secretary of State
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Topeka, Kansas 66612