



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 85-137

The Honorable Jack H. Brier
Secretary of State
Capitol, 2nd Floor
Topeka, Kansas 66612

Re: Notaries Public and Commissioners -- Notaries
Public -- Seal

Synopsis: K.S.A. 53-105 prescribes the requirements of a notary seal in this state. Decisions of the Kansas Supreme Court indicate that the fact that a notary seal does not comply strictly with the statute will not necessarily invalidate the document to which the seal is affixed. Accordingly, the omission of the required words "state of Kansas" in a notary seal would not be construed to vitiate the effect of the document to which the seal is affixed. Cited herein: K.S.A. 53-105; 53-106; 53-118.

* * *

Dear Secretary Brier:

You have requested our opinion interpreting K.S.A. 53-105. The statute in question provides:

"Every notary public shall provide a notarial seal containing such notary's name exactly as it appears on the application for appointment as a notary public, and the words 'notary public' and 'state of Kansas' and such seal shall authenticate all official acts, attestations and instruments therewith. Every notary public shall add to such notary's official signature the date of expiration of appointment as a notary public. The seal of every notary public

shall be either a seal press and the impression thereof inked or blackened or a rubber stand to be used with permanent ink so that any such seal may be legibly reproduced by photographic process. No notary public shall use either such seal unless an impression thereof has been filed in the office of secretary of state."

You ask whether a notary seal which contains all of these particulars except the words "state of Kansas" would impair the effectiveness of the document to which it is attached. In our opinion, Kansas case law indicates that such a defect in a notary seal would not have such an effect.

We note that K.S.A. 53-106 establishes a penalty for a notary public who shall "willfully neglect or refuse to attach to the notary's official signature the date of expiration of appointment, as provided in K.S.A. 53-105" Such offense is a class C misdemeanor. This penalty provision was interpreted by the Kansas Supreme Court in Windmill Co. v. Barker, 49 Kan. 434 (1892). There the court faced the question of whether the omission of a notary public in failing to attach to his signature the expiration date of his appointment invalidated the affidavit to a lien (thereby voiding the lien). The court construed the provisions of K.S.A. 53-106 and concluded:

"The court below found as a fact that the notary public before whom the affidavit verifying the lien was made failed to state after his official signature the time when his commission would expire, and upon such finding the court held, as a matter of law, the lien was void. We do not think such omission on the part of the notary renders the lien void. The statute requiring such addition on part of the notary does not attempt to avoid the affidavit taken by the notary on account of such omission. It simply subjects the notary to a penalty therefor. The omitted matter constitutes no part of the affidavit, not of the jurat thereto. It is a statutory requirement to be observed by the notary for the purpose of making the instrument show that the notary taking the affidavit is still in commission and with power to do so." 49 Kan. at 440.

Similarly, in Matthewson v. Richards, 114 Kan. 500 (1923), the validity of a deed was challenged on the grounds that the name of the county was not stated in the caption of the acknowledgment and that the deed was therefore defective. The court rejected the argument that this omission was a substantial defect. The court noted that to be sufficient a certificate must follow substantially the requirements of the statute, however, such certificates should be liberally construed.

A general rule on this subject is noted in 66 C.J.S. Notaries §8:

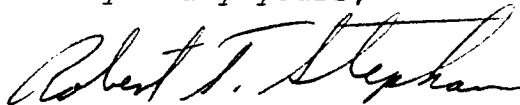
"The requisites of a notary's seal are fixed and controlled by the law of the locality from which he derives his authority Statutory provisions concerning the emblems, devices, and legends to be borne by the seal have been held to only directory, and want of compliance therewith has been held not to vitiate the seal or the certificate, but other statutes have been held to require compliance with their terms as a prerequisite to the validity of the seal or certificate."

It appears that the Kansas Supreme Court has taken the former view, albeit some time ago, so that if the statutory requirements regarding a notary seal are not strictly complied with the validity of the document to which the seal is attached will not be affected. We note as well that the Kansas court in Windmill Co. v. Barker was construing a provision which penalizes a notary for omitting one of the statutory requirements. The legislature has not provided such penalties for the omission of other requirements, such as the words "state of Kansas." Although we would not attempt to predict how the Kansas courts might rule on this question today (much could depend on factual circumstances such as the degree of non-compliance), it appears that under the current law of the state non-substantial omissions of the statutorily required portions of a notary seal will not necessarily affect the validity of the document to which the seal is attached.

This is not to say that the requirements of K.S.A. 53-105 may be ignored without effect. We note that K.S.A. 53-118 gives the secretary of state the discretionary authority to refuse to appoint a person as a notary public or to revoke an

appointment on several grounds including the ". . . failure to exercise the powers and duties of a notary public in accordance with this act." This statute, coupled with the requirement of K.S.A. 53-105 that an impression of each seal be filed with the secretary of state, should make it possible in most instances to insure compliance with the statutory requirements.

Very truly yours,



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