



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 13, 1977

ATTORNEY GENERAL OPINION NO. 77- 18

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

Attn: Mr. Max Moses

Re: Notaries Public--Appointment--Effective Date

Synopsis: No person may be appointed a notary public under K.S.A. 53-101 *et seq.* unless there is in effect on the date of such appointment a valid surety bond as required by K.S.A. 53-102. No appointment may be made to empower any person to act as a notary public retroactively, *i.e.*, prior to the date the appointment is made, although an appointment may be made to commence at a date certain in the future.

* * *

Dear Secretary Shanahan:

K.S.A. 53-101 commences thus:

"The secretary of state shall appoint notaries public, who shall hold their office for four (4) years."

Every applicant for appointment as a notary public must comply with K.S.A 53-102, which provides in pertinent part thus:

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"Every notary public before entering upon the duties of that office shall file with the secretary of state an application for appointment as a notary public, the oath of office and a good and sufficient bond to the state of Kansas in the sum of two thousand five hundred dollars (\$2,500), with one or more sureties to be approved by the said secretary of state, conditioned for the faithful performance of the duties of that office. . . ."

You advise that under the present practice of your office, an expiration date for an appointment is not assigned until all of the properly completed material and the prescribed fee is received in your office. You request my opinion "whether the bond furnished by the surety should, before submitting the same to the Secretary of State, contain the effective as well as the expiration dates." As a practical matter, the surety is unable to state an effective date or the expiration date of the bond until your office notifies the notary of the expiration date of the appointment. In my judgment, the statute prescribes as a qualification for appointment that there be in force and effect on the date of the appointment a surety bond as specified in the statute. If the bond is submitted with a fixed effective date, the appointment must be made effective on that date.

You ask whether you may issue an appointment having an expiration date in such a fashion that the corresponding effective date is prior to the receipt of all the items listed in K.S.A 53-102, and the required fee. By way of example, you ask whether, if your office receives an application and bond on January 10, 1977, which recites an effective date of January 3, 1977, and an expiration date of January 3, 1981, you may make an appointment for the period of time listed on the submitted application and/or bond. In my judgment, there is no authority for you to execute an appointment of a person as notary public which operates retrospectively, *i.e.*, to designate a date prior to the date of the appointment from which the person so appointed is constituted with the powers of a notary public. The appointment may be designated to commence at a date certain in the future, but not from a date certain which has already passed at the time of appointment.

Yours very truly,



CURT T. SCHNEIDER
Attorney General