



STATE OF KANSAS

*Office of the Attorney General*

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

*Curt T. Schneider*  
Attorney General

July 24, 1978

ATTORNEY GENERAL OPINION NO. 78- 245

Mr. Sherman A. Parks, Jr.  
Deputy Assistant Secretary of State  
Office of the Secretary of State  
2nd Floor - State Capitol  
Topeka, Kansas 66612

Re: Notaries Public--Qualifications--Citizenship

Synopsis: A person who is not a citizen of the United States is ineligible for appointment as a notary public under K.S.A. 53-101 et seq.

\* \* \*

Dear Mr. Parks:

You advise that your office has received applications for appointments as notaries public from persons who have been residents of the State of Kansas for a number of years, but who are not citizens of the United States. You inquire whether such persons are eligible for such appointments.

K.S.A. 53-101 states thus in pertinent part:

"Any person who is at least eighteen (18) years of age and who has been a resident of this state for at least one hundred and eighty (180) days immediately prior to the date of the application for appointment as a notary public shall be eligible to be appointed as a notary public as provided in this act."

Mr. Sherman A. Parks, Jr.  
Page Two  
July 24, 1978

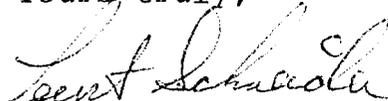
Citizenship is thus not a statutory qualification for appointment.

In *State ex rel. Gregory v. Irely*, 116 Kan. 21 (1924), the court considered an action to oust the respondent from the office of probate judge on the ground he was not a citizen of the United States. The court stated thus:

"No constitutional or statutory provision expressly requires one to be a citizen in order to hold the office of probate judge. There is some difference of judicial opinion whether such requirement exists by implication with regard to public officers generally . . . . We accept the view that where the written law is silent an alien is legally incompetent to fill a public office. The Kansas constitution in its original form perhaps qualified this rule by giving aliens who had declared their intention of becoming citizens a different status through allowing them to vote . . . . This privilege was withdrawn in 1918 by the amendment of the section cited, so as to restrict the right of suffrage to citizens. This change in the policy of the state explicitly depriving aliens of the right to vote, by fair inference imposed upon them the disability to hold office if it had previously existed. . . . Under the present law, which does not in express terms either grant to an alien or withhold from him the capacity to hold public office, the implication against the existence of the right is almost equally clear." 116 Kan. at 22-23.

Following this view, in an opinion to the Honorable Paul Shanahan, Secretary of State, dated September 2, 1958, Attorney General John Anderson, Jr., concluded that an alien may not hold the office of notary public in this state. I find no intervening decisions of the Kansas Supreme Court or statutory changes which alter this conclusion, and accordingly, I must concur in that opinion.

Yours, truly,

  
CURT T. SCHNEIDER  
Attorney General