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NOTARY PUBLIC:

1. MAY TAKE ACKNOWLEDGMENTS OF DEEDS ONLY WITHIN COUNTY OR COUNTIES COVERING APPOINTMENT—POWER NOT LIMITED OR EXTENDED BY LOCATION OF PROPERTY TO BE CONVEYED.

2. COMMISSIONED FOR CERTAIN COUNTY—REMOVES LEGAL RESIDENCE TO ANOTHER COUNTY—OFFICE AS NOTARY PUBLIC FORFEITED—SECTION 119 G. C.

3. RETURN TO COUNTY OF APPOINTMENT AS VISITOR—WOULD NOT GIVE RIGHT TO THERE EXERCISE POWERS OF NOTARY PUBLIC.

SYLLABUS:

1. A notary public may take acknowledgments of deeds only within the county or counties for which he is appointed, and such power is neither limited nor extended by the location of the property to be conveyed.

2. A notary public who has been commissioned for a certain county, pursuant to Section 119 of the General Code, and who, during his term removes his legal residence to another county, thereby forfeits his office as a notary public.

3. His return to the county of his appointment as a visitor, would not give him the right to exercise there the powers of a notary public.

Columbus, Ohio, January 26, 1953

Hon. W. H. Lohr, Prosecuting Attorney
Vinton County, McArthur, Ohio

Dear Sir:

I have before me your request for my opinion, reading in part, as follows:

> "John Doe was duly commissioned a notary public in Vinton county, Ohio in 1950, and his commission was duly filed with the Clerk of Courts. In 1951, John Doe moved his home to Athens county, Ohio, and declared Athens county to be his residence from then on.
>
> "Question 1. May John Doe properly take acknowledgments in Athens county for property located in Vinton county, Ohio?
>
> "Question 2. May John Doe come into Vinton county on a visit and properly take acknowledgments while a bona fide resident of Athens county, Ohio?"

Section 119 of the General Code, authorizes the Governor to appoint notaries public. A portion of that section reads as follows:

> "The governor may appoint and commission as notaries public as many persons as he may deem necessary who are citizens of this state, of the age of 21 years or over, and residents of the counties for which they are appointed; but citizens of this state of the age of 21 years or over, whose post office address is a city or village, situated in two or more counties of the state, may be appointed and commissioned for all of the counties within which such city or village is located; and also provided that a citizen of this state, who is admitted to the practice of law as an attorney and counsellor in this state, or any person who has been certified by a judge of the court of common pleas of the county in which

he resides as qualified for the duties of official stenographic reporter of such court, may be appointed and commissioned as a notary public for the state of Ohio. * * *"

With certain exceptions not here applicable, it will be noted that any person so appointed must be a resident of the county for which he is appointed.

Section 126 of the General Code, defines the powers and further indicates the extent of the jurisdiction of a notary. That section reads as follows:

"A notary public shall have power, *within the county or counties for which he is appointed,* or if commissioned for the whole state, throughout the state, to administer oaths required or authorized by law, to take and certify depositions, to take and certify to acknowledgments of deeds, mortgages, liens, powers of attorney and other instruments of writing, and to receive, make and record notarial protests. In taking depositions he shall have the power which is by law vested in justices of the peace to compel the attendance of witnesses and punish them for refusing to testify. Sheriffs and constables are required to serve and return all process issued by notaries in the taking of depositions. If the post office which is recorded in the governor's office as the address of a notary public is in a city or village situated in two or more counties or if such notary be an attorney-at-law commissioned throughout the state such notary public may receive, make and record notarial protests within the established limits of such city or village." (Emphasis added.)

The words "county or counties" evidently refer to that portion of Section 119, supra, which authorizes a notary public to exercise his authority in more than one county where his post office address is a city or village situated in two or more counties. Except for this, a notary public who is appointed merely for a county, is strictly limited in his jurisdiction to the county for which he is appointed.

Never having been appointed as a notary public for Athens County, it is clear that John Doe would not be authorized under his Vinton county commission to take acknowledgments in Athens county, regardless of his present place of residence or of the location of the property to be transferred. This answers your first question.

Your second question involves a consideration of whether the perma-

nent removal of John Doe from Vinton county to Athens county effected a forfeiture of his office as notary public of Vinton county.

It is plain that a notary public is an officer, as that term is used in the law. He is so designated in other statutes, such as Section 122, General Code, which provides:

> "Such notary shall hold his office for a term of three years unless his commission shall be revoked. Before entering upon the duties of his office he shall give bond * * *."

Furthermore, it will be noted that his powers are not limited to taking acknowledgments and administering oaths, but he is given quasi-judicial powers in compelling attendance and testimony of witnesses and in punishing them for refusal to testify. He is also given powers as to the presentment and protest of bills of exchange. No statute gives him any authority to act outside of the county in which he is appointed and has jurisdiction, except in the limited degree contained in the final sentence of Section 126 supra.

If, during the term of office for which he is thus commissioned, he should remove his legal residence from the county in which he is an officer, to some other county, then he would appear to fall directly within the rule laid down by the Supreme Court in the case of State, ex rel. Ives v. Choate, 11 Ohio, 511, in which the court held:

> "The legislature may change the boundaries of a county, and when such change places an associate judge within the limits of another county, who does not, within a reasonable time remove into the limits of the county for which he was appointed, he forfeits his office.
>
> "A person who attempts to exercise the office of associate judge in a county wherein he does not reside, is guilty of intrusion and usurpation."

In the course of the opinion the court referring to the fact that the judge in question ceased by the action of the legislature to be a resident of the county in which he was elected, used this expression:

> "No one could contend that a voluntary removal was not a forfeiture and resignation of his office. * * * Can it make any difference when this removal is effected by the exercise of a constitutional right of the general assembly and by an act of omission in the officer?"

This case was referred to and relied upon in an opinion by one of my predecessors, to wit, Opinion No. 1972, Opinions of the Attorney General for 1938, page 390, where it was held:

> "2. One who has been appointed as a trustee of a municipal public library, in accordance with the provisions of Section 4004, General Code, is a public officer and is required by the provisions of Section 4666, General Code, to be an elector within the corporation. If such a trustee moves outside of the limits of the village corporation he thereupon forfeits his office as trustee of the municipal public library."

These expressions are in accord with the general rule as laid down in such works as Corpus Juris Secundum. I find on page 229 of Volume 67 of that work, the following:

> "An office may be vacated by abandonment, as, for example * * * by leaving the state or territorial jurisdiction of his office, or by permanently removing from a particular place or district, where a statute requires residence of the officer in such place or district."

Likewise, it is said in 43 American Jurisprudence, page 27:

> "The abandonment of an office may be shown by the action of the officer in leaving the state or changing his residence from the territorial jurisdiction of the office, especially where the law requires the officer to reside in the county or district in which he holds his office. * * *"

It accordingly appears quite clear that when the party mentioned in your letter, who had been commissioned a notary public in Vinton county, moved during his term to Athens county, he abandoned and thereby forfeited his office as notary public. Therefore, he was wholly without authority to take acknowledgments in any county relative to any property, regardless of its location. The fact that the property was located in Vinton county, could have no effect in enlarging or extending his powers. The power of a notary public to take acknowledgments of deeds and other instruments relating to real property is not conditioned in any way upon the location of the property.

In the light of the foregoing, it appears quite evident that the party in question, who had by his removal forfeited his commission as a notary public in Vinton county, could not take advantage of the fact that he re-

turned to that county on a visit, and there exercise the power which he had lost by abandonment.

Specifically answering your questions it is my opinion:

1. A notary public may take acknowledgments of deeds only within the county or counties for which he is appointed, and such power is neither limited nor extended by the location of the property to be conveyed.

2. A notary public who has been commissioned for a certain county, pursuant to Section 119 of the General Code, and who, during his term removes his legal residence to another county, thereby forfeits his office as a notary public.

3. His return to the county of his appointment as a visitor, would not give him the right to exercise there, the powers of a notary public.

Respectfully,

C. WILLIAM O'NEILL
Attorney General