

**OPINION NO. 90-082****Syllabus:**

In order for a writing to be notarized pursuant to R.C. Chapter 147, the notary public must manually sign the acknowledgment or certificate. Use of a rubber stamp facsimile signature does not constitute the signature of a notary public.

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**To: Alan R. Mayberry, Wood County Prosecuting Attorney, Bowling Green, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, November 14, 1990**

I have before me your request for my opinion concerning the use of rubber stamps in notarizing documents. Your letter notes that "wide and easy availability of a notary seal and rubber stamp for signature may permit persons other than the commissioned notary to acknowledge and otherwise execute documents in his stead." You, therefore, have specifically asked "whether a notary public must manually sign documents presented for notarization or whether a rubber stamp signature is sufficient."

A notary public is a ministerial public official whose duty it is to attest to the genuineness of deeds or writings. *Jii v. Rhodes*, 577 F. Supp. 1128 (S.D. Ohio 1983); *see also Bettman v. Warwick*, 108 F. 46 (6th Cir. 1901); *State ex rel. Smith v. Johnson*, 12 Ohio App. 2d 87, 231 N.E.2d 81 (Mahoning County 1967). Notaries public are appointed and commissioned by the governor, to, among other duties, certify depositions and certify acknowledgments of deeds, mortgages, liens, powers of attorney, and other instruments in writing. R.C. 147.01; R.C. 147.07. A notary's other duties include administering oaths, and the taking of depositions, for which notaries are granted the same powers as judges in county courts to compel the attendance of witnesses and to punish witnesses for refusing to testify. R.C. 147.07.

Notarial acts which the law and regulations of Ohio authorize notaries public of this state to perform are generally memorialized by an acknowledgment. *See* R.C. 147.55 ("[t]he forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any section of the Revised Code.... The authorization of the forms in this section does not preclude the use of other forms." Each of the forms set forth requires the notary to include his signature and title as part of the acknowledgment). In order to "notarize" a writing, the notary public attests to and certifies it "by his hand and official seal." *See Black's Law Dictionary* 1060 (6th ed. 1990); R.C. 147.04 ("[t]he name of the notary public may, instead of appearing on the seal, be printed, typewritten, or stamped in legible, printed letters near his signature on each document signed by him" (emphasis added)). Essential to notarization is "a written statement, also called a certificate or certification, to which a Notary Public has affixed his official signature, official seal embosser, title, jurisdiction, commission expiration date, and address." R. Rothman, *Notary Public Practices & Glossary* 11 (1978).

Notarization of instruments, thus, consists of two essential notarial acts on the part of the notary public—signing and sealing. A notarial seal is generic with specifications provided by R.C. 147.04. Although R.C. 147.04 requires the name of the notary public to be part of the seal, R.C. 147.04 permits, in the alternative, the name of the notary public "instead of appearing on the seal [to] be printed, typewritten, or stamped in legible, printed letters near his signature on each document signed by him." One notary's seal may, therefore, be indistinguishable from that of another notary. Moreover, while the seal is statutorily required, omission of its impression on a writing does not vitiate the notarization of the instrument. *See Fund Commissioners of Muskingum County v. Glass*, 17 Ohio 542 (1848); *Ashley v. Wright*, 19 Ohio St. 291 (1869); *City Commission of Gallipolis v. State ex rel. Houck*, 36 Ohio App. 258, 173 N.E. 36 (Gallia County 1930); *Venneman v. Sievering*, 9 Ohio Dec. Reprint 459 (Super. Ct. Cincinnati 1885). Inasmuch as the sealing of a document may be with a generic notary seal, and the sealing of a writing is not conclusive of an official notarial act by a particular notary public, the notary's signature would appear to lend greater credence that the document was properly notarized.

Since a notary public's signature is the essential element of notarization, it must be determined what constitutes a notary's signature. Neither "signature" nor "signed" is defined in R.C. Chapter 147. Absent a statutory definition, a term used in legislation generally retains its common meaning. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983). "Sign" carries the common meaning of: "[t]o affix one's signature to; [t]o write (one's signature); [t]o approve or ratify (a document) by affixing a signature, seal, or other mark; [t]o express or signify with a sign." *American Heritage Dictionary* 1139 (2d ed. 1982). "Signature" has among its ordinary meanings: "the name of a person as written by himself; [a] distinctive mark, characteristic, or sound, effect indicating identity; [t]he act of signing one's name." *Id.* Similarly, my predecessor found "signed" to generally mean "any symbol executed or adopted by a party with the present intention to authenticate a writing," and noted that any mark, symbol or device chosen as a representative of

the signer written by hand, printed, stamped, typewritten, or cut from one instrument and attached to another could serve as a "signature." 1978 Op. Att'y Gen. No. 78-028, at 2-67. Moreover, that opinion specifically found that a facsimile could be adopted as a signature.

The general rule regarding signatures is different, however, for public officials, for whom "the general doctrine [is] that all public officers must sign their own name to their own returns and certificates of official acts." *Chapman v. Inhabitants of Limerick*, 56 N.E. 390, 393 (1868). Further, the court expressly stated that "the law generally means by a signature, the writing by a man of his own name, or by actually making his mark." *Id.* at 392. Therefore, as a general matter, facsimile signatures by public officials are not permitted.

Exceptions to the general rule prohibiting the use of facsimile signatures by public officers are present in several statutes that authorize facsimile signatures only in restricted circumstances. See, e.g., R.C. 107.15 (governor); R.C. 111.06 (secretary of state); R.C. 9.11 (any public official, authorized agent, or employee "who is permitted or required in performance of his duties to affix his signature on any check, draft, warrant, voucher, or other instrument for the payment of money, may adopt a facsimile thereof, in lieu of such manual signature, and affix such facsimile to any such instrument" (emphasis added)).

While facsimile signatures are statutorily permitted for certain public officers under statutory guidelines, a "'facsimile' signature...does not authorize the use of a rubber stamp signature by the official or authorized employee referred to in section 9.11 of the Revised Code on the face of any instrument mentioned in such section." R.C. 9.10; *but see* R.C. 107.15 (governor's facsimile signature includes "a rubber stamp"); R.C. 111.06 (secretary of state's facsimile signature includes "a rubber stamp"). Moreover, applying the maxim of *expressio unius est exclusio alterius*, which holds that the naming of a specific class implies the exclusion of those not named, leads to the conclusion that the General Assembly intended only those public officials specified by statute to be able to use facsimile signatures. See *Craftsman Type Inc. v. Lindley*, 6 Ohio St. 3d 82, 451 N.E.2d 768 (1983). Absent specific statutory authority, therefore, use of rubber stamped signatures by public officials on original documents is outside the normal rule whereby a person may adopt a facsimile as his signature. *State ex rel. Drucker v. Reichle*, 81 N.E.2d 735, 736 (Ct. App. Cuyahoga County 1948) (use of a rubber stamp by a judge on original judgment entries presented for recording in the court's journal was unauthorized, because "absolute certainty" was lacking that an entry signed by a judge by rubber stamp was actually the judge's entry). The substantial doubt engendered by a notary's use of a rubber stamped signature that someone other than the notary applied the signature, provides a strong argument against accepting the procedure as valid. See generally Rothman at 42 ("[t]he Notary's signature should be written in ink in his own hand. (A rubber stamp with the Notary's signature should never be stamped on a notarial certification)").

The acceptance of notarization flows from the nature of the position of notary public as a public official. High standards of character and qualifications are required before the governor may appoint a person to the office of notary public. R.C. 147.02 (before appointment, a "certificate from a judge of the court of common pleas, court of appeals, or supreme court, that he is of good moral character, a citizen of the county in which he resides...and possessed of sufficient qualifications and ability to discharge the duties of the office of notary public" must be obtained from an applicant). Notaries public take an oath of office and are subject to removal from office for violations of the oath, R.C. 147.03, for receiving excessive fees or dishonestly or unfaithfully discharging any duties, R.C. 147.13, or for certifying an affidavit without administering an oath, R.C. 147.14.

Due to the great trust placed by the state and its citizens in notarized documents, notarization of a writing can only be done by a notary public. The power is personal and cannot be delegated. See *Commercial Bank of Kentucky v. Barksdale*, 36 Mo. 563 (1865); *Ocean National Bank v. Williams*, 102 Mass. 141 (1869); *Gawtry v. Doane*, 51 N.Y. 84 (1872). The trust in notarized documents would be lessened if it was doubted that the notary public personally signed each document. Such doubt would be fostered by recognizing the use of rubber stamped facsimile signatures of notaries.

Therefore, it is my opinion and you are hereby advised that in order for a writing to be notarized pursuant to R.C. Chapter 147, the notary public must manually sign the acknowledgment or certificate. Use of a rubber stamp facsimile signature does not constitute the signature of a notary public.