

Section 176 of the General Code is clear upon the point concerning which you inquire. The 8th subdivision of that section is as follows:

"For filing and recording a certificate of amendment which does not increase the number of authorized shares, *or any other certificate or copy required or permitted to be filed by the general corporation act*, or any other certificate or paper not otherwise specifically provided for by statute, the sum of ten dollars."

The italicized portion is clearly applicable to the certificate of dissolution of a corporation filed pursuant to the provisions of Section 8623-79 of the Code. As pointed out, in the letter of the corporation, this section permits the filing of a certificate of dissolution in the office of the secretary of state.

Section 8623-80 states that upon the filing of this certificate, together with other documents, the corporation shall be dissolved. Accordingly it is clear that this is a certificate permitted to be filed by the general corporation act, since both Sections 8623-79 and 8623-80 are parts of the general corporation act.

The 10th subdivision of Section 176 of the Code which is quoted in part in the letter of the corporation is applicable to miscellaneous records, papers and documents, but since the 8th subdivision is specifically applicable to a certificate of the character here involved, manifestly the 10th subdivision does not apply.

By way of specific answer to your inquiry, I am of the opinion that the secretary of state is authorized and required to charge the sum of \$10.00 for filing the certificate of dissolution of a corporation not for profit.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2758.

ABSENT VOTER'S BALLOT—NOTARY PUBLIC MAY NOT CHARGE FEE
FOR ASSISTING VOTERS.

SYLLABUS:

Notaries public may not charge a fee for services performed in assisting absent voters under Section 5078-3, General Code.

COLUMBUS, OHIO, October 19, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent letter which reads as follows:

"We request your opinion on the marked paragraph of the enclosed circular as to whether this section applies to Notary Publics, the question being whether Notary Publics may charge a fee or not."

The marked paragraph of the circular enclosed therein is as follows:

"No election, or other official of the State of Ohio shall make any charge for services rendered to voters under the provisions of the Absent Voters' Law, except the executing officer shall be furnished the postage necessary to transmit the ballot to the home county Board of Elections by registered mail."

This paragraph appears in what purports to be a circular of "Instructions to Absent Voters" signed by the Board of Deputy State Supervisors of Elections and is evidently based on Section 5078-1, General Code. The pertinent part of this section which relates to such quoted paragraph is as follows:

"All supplies necessary for absent voting shall be furnished by the proper election officers without cost to the voter, and no election or other official of the State of Ohio shall make any charge for services rendered to voters under the provisions of this act, * * *"

The services which might form a basis for the charge of fees concerning which you inquire are specified in Section 5078-3, General Code, which provides that an elector who has received the absent voter's supplies may appear before any board, etc., or "before any officer either within or without this State authorized to administer oaths, and mark and seal his ballot under the scrutiny of such official in the following manner. * * *" The extent and nature of the services are then prescribed in the second paragraph of said Section 5078-3, General Code, which is as follows:

"The voter shall first display the ballot to such official as evidence that the same is unmarked and shall then proceed to mark the ballot in the presence of such official but in such manner that such official is unable to see how the same is marked and shall then fold said ballot and enclose and seal the same in the identification envelope. The voter shall then make out and swear to the affidavit printed on the face of such envelope and deliver the same properly sealed to the official before whom the ballot is marked. Such official shall sign and deliver to the voter the receipt for the ballot and shall certify to the affidavit printed on the identification envelope, which envelope containing the ballot and sealed as aforesaid shall be by the voter placed in the return envelope and mailed by the official at once by registered mail to the board of deputy state supervisors of elections of the home county of the voter. * * *"

The answer to your question depends upon whether or not a notary public in Ohio is an "official of the State of Ohio." The sections of the statute providing for the creation and conduct of the office of notaries public indicates that such was the intention of the Legislature. Thus Section 119, General Code, providing for the appointment of notaries public by the Governor, provides that the Governor may revoke a commission upon evidence of "official" misconduct; and Section 122, General Code, provides that an appointee shall hold "office" for the term of three years, and that he shall give bond before entering upon the duties of his "office". Section 123, General Code, provides for an "official" register; and Section 124, General Code, provides for the deposit of his commission before entering upon the duties of his "office". Section 129, General Code, provides that an "official" act done after the expiration of the term of "office" is valid. Section 131, General Code, provides for the removal of a notary public from "office" and his ineligibility for reappointment to the "office". Also penal Section 12626, General Code, provides a penalty for the performance of acts by a notary public after his "term of office" has expired.

Webster's New International Dictionary defines an "officer" to be:

"One charged with a duty; one who holds an office, a person lawfully invested with an office."

And defines an "official" as:

“One who holds or is invested with an office—especially one having subordinate administrative or executive powers in a government or public institution.”

The Supreme Court of Ohio has held that a notary public is an “officer” within the contemplation of Article XV, Section 4, of the Ohio Constitution, which provides that:

“No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector; * * * *State vs. Adams*, 58 O. S. 612.”

The Ohio Supreme Court also held in the case of *In re: Rauh*, 65 O. S. 128, that a notary public was an “officer” in Ohio within the meaning of former Revised Statute Section 5248, which provided that:

“When the evidence of a witness before an *officer* authorized to take depositions is required, the subpoena shall be issued by such officer.” (page 136).

A federal court has also held that a notary public in Ohio is a state officer, in the case of *Bettman vs. Warwick*, 13 O. F. D. 668, in which the third headnote reads as follows:

“3. A notary public, appointed under the laws of the state by the governor, is a state officer, employed in the exercise of functions belonging to it in its governmental capacity.”

Judge Linton in his opinion, in which Justices Day and Severns concurred, proceeds further, as follows:

“A notary public is a well known public official whose duties are both administrative and judicial. In Ohio he is appointed by the governor. * * * That he is an officer of the state engaged in the administration of the law of the state; and that he exercises most important public functions by authority of the state cannot be denied. * * * The test as to whether a notary is engaged in the exercise of governmental powers of the state does not depend upon how his compensation is provided. That is a matter for legislative regulation and in no wise affects the nature or powers of the official who is so compensated.”

To the same effect are the definitions found in *Words and Phrases*, (Vol. III, Second Series 713) citing *In re: Opinion of Justices*, 62 Atl. 969 (N. H.), and quoting therefrom as follows:

“The position or place of notary public is clearly a public office. Since under the common law, women are disabled from holding office they are disqualified from appointment as notaries public.

A public officer is one who has some duty to perform concerning the public; and he is not the less a public officer when his duty is confined to narrow limits because it is the duty which makes him a public officer and not the extent of his authority.”

It has also been held that a notary public is a public officer within the meaning of the New York Constitution prohibiting the use of free transportation by a public official. (*People vs. Wadhams*, 68 N. E. 65 N. Y.)

From the foregoing it appears that the language employed in Section 5078-1, General Code, quoted in your Instructions to Absent Voters, is very clearly sufficiently comprehensive to include notaries public. The compensation to be received by notaries public is partially prescribed in Section 127, General Code, and further in Section 1746-2, General Code, providing for compensation for Justices of the Peace. In neither of these sections do we find provision for compensation for the particular services provided by Section 5078-3, General Code, in assisting voters.

Answering your question specifically, my opinion is that notaries public may not charge a fee for services performed in assisting absent voters under Section 5078-3, General Code.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2759.

APPROVAL, BONDS OF THE VILLAGE OF CHESAPEAKE, LAWRENCE COUNTY, OHIO—\$6,240.00.

COLUMBUS, OHIO, October 19, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2760.

APPROVAL, BONDS OF CLEVES-NORTHBEND VILLAGE SCHOOL DISTRICT, HAMILTON COUNTY—\$31,000.00.

COLUMBUS, OHIO, October 19, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2761.

ELECTIONS—REGISTRATION CITIES UNDER 300,000 POPULATION—EXTRA COMPENSATION OF JUDGE OF ELECTION.

SYLLABUS:

1. *In registration cities containing less than three hundred thousand population there is no compensation provided for the judge carrying the returns to the deputy state supervisors or the judge carrying the returns to the county or township clerk or clerk or auditor of the municipality.*

2. *In registration cities containing less than three hundred thousand population, the judge of elections, who is selected as the chairman of the meeting for organization, shall receive one dollar for calling for the sealed package of ballots, and he is not entitled to any further compensation for delivering the ballots, poll books, tally sheets, etc.*

COLUMBUS, OHIO, October 19, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication requesting my opinion as follows: