

OPINION NO. 77-044

Syllabus:

1. R.C. 147.01, et. seq., as amended by Am. Sub. H.B. 154 (eff. 8-23-77) requires all notaries public to equip themselves with a seal that includes the words "State of Ohio".

2. An otherwise valid notarial act will not be rendered invalid if, after the effective date of Am. Sub. H.B. 154, the notary public utilizes a seal that designates the specific county for which that notary was commissioned prior to the effective date of the act.

To: James A. Rhodes, Governor, Columbus, Ohio
By: William J. Brown, Attorney General, August 3, 1977

Your request for my opinion poses the following questions:

1. By virtue of the changes made in R.C. 147.01, et. seq., as amended, eff. 8-23-77, will all notaries public be required, after August 23, 1977, to equip themselves with a seal that includes the words "State of Ohio"?
2. If the answer to the above is in the affirmative, will a notarial act be invalid if performed after August 23, 1977, by a notary who utilizes a seal that designates a specific county for which that notary was commissioned?

Under existing law, a notary public, except under certain specific conditions, is appointed only for the county in which he resides. A notary public can only function as such in the county in which he is appointed and commissioned.

R.C. 147.01, as amended by Am. Sub. H.B. 154, (eff. 8-23-77), provides in pertinent part as follows:

" . . . A notary public shall be appointed and commissioned as a notary public for the state . . . "

R.C. 147.07, which was amended by the same act, provides in pertinent part as follows:

"A notary public may, throughout the state, administer oaths required or authorized by law, take and certify acknowledgments of deeds, mortgages, liens, powers of attorney, and other instruments of writing . . ."

Thus, as of the effective date of this act, all notaries public will be appointed and commissioned for the entire state, and they will be permitted to function as notaries public in all counties throughout the state.

R.C. 147.04, as amended, provides in pertinent part as follows:

"Before entering upon the discharge of his duties, a notary public shall provide himself with a seal of a notary public. The seal shall consist of the coat of arms of the state within a circle one inch in diameter and shall be surrounded by the words "notary public", "notarial seal" or words to that effect, the name of the notary public, and the words "State of Ohio" . . ."

The 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 . . ."

With respect to your first question, the amended version of R.C. 147.04 specifically requires a notary public to equip himself with a seal of a notary public before entering upon the discharge of his duties. Furthermore, the seal will no longer state the limits of the notary public's jurisdiction, but it must include the words "State of Ohio". Thus, it seems clear that all notaries public will be required, after August 23, 1977, to equip themselves with a seal that includes the words "State of Ohio".

With respect to your second question, R.C. 147.37, as amended, provides in pertinent part as follows:

"Any person serving as a notary public on the effective date of this act whose appointment does not extend throughout the entire state, has jurisdiction throughout the entire state on the effective date of this act without the payment of an additional fee or charge, for the unexpired remainder of his term . . ."

The statute indicates that a notary public who is presently commissioned in a particular county will have jurisdiction throughout the entire state on the effective date of the act, and may function as a notary public in all counties of the state for the unexpired remainder of his term. He may take and certify instruments of writing throughout the entire state, as of the effective date of the act.

Although the statute requires that the seal conform to certain specifications, I do not feel that a notarized act will be rendered invalid if performed after August 23, 1977, by a notary public who utilizes a seal that designates the specific county in which he was commissioned prior to the effective date of the act.

The Ohio Supreme Court, in Stern v. Bd. of Elections, 14 Ohio St. 2d 175 (1968) discusses R.C. 147.04 in regard to notary seals, as follows:

"The effect of the proviso [Section 147.04] is that he need not have such seal if his name is stamped or printed on the document in a legible manner. Manifestly, if the seal itself is not required to give effect to the official act of the notary, the requirements of the proviso are not essential; and it is to be noted in this respect that the above statutory requirement that the notary shall provide himself with a seal does not make it a condition of the validity of his authentication of an affidavit that he use it." Also see City Commissioner v. State, 36 O. App. 258 (1930).

In the Stern case, the Court permitted the board of elections to print the names of candidates contained in a petition, even though the notary public inadvertently omitted his handwritten signature and seal from the certificate which follows the circulator's affidavit on the petition. The Court rationale provides at page 180:

"Absolute compliance with every technicality should not be required . . . unless such complete and absolute conformance to each technical requirement of the printed form serves a public interest and a public purpose."

In the Stern case, the notary affixed his stamp to the certificate in question and thus printed his name, the title of his office, the limits of his jurisdiction and expiration date of his commission. The court indicated that it represented prima facie evidence that he had administered the oath. Furthermore, it provided sufficient identification which would permit the board to seek out such person to determine if he had administered the oath as required by law.

The foregoing case indicates that the seal is not essential to the validity of an affidavit. It merely attests to the genuineness of the signature of the notary public.

Furthermore, several statutes indicate that affidavits and other instruments in writing are valid notwithstanding the fact that the notary public did not affix his seal to such instrument. See R.C. 2319.04, 2319.23 and 5301.07.

Therefore, while Am. Sub. H.B. 154 requires all notaries public to equip themselves with a seal that includes the words "State of Ohio", it is clear that a notarial act will still be valid after August 23, 1977, even though the notary utilizes a seal that designates a specific county for which that notary was

commissioned prior to the effective date of the act. Since the complete absence of the official seal does not seem to affect the validity of the instrument, the failure to conform in this one particular respect certainly would not affect the validity of the instrument.

In specific answer to your questions, it is my opinion and you are so advised that:

1. R.C. 147.01, et. seq., as amended by Am. Sub. H.B. 154 (eff. 8-23-77) requires all notaries public to equip themselves with a seal that includes the words "State of Ohio".

2. An otherwise valid notarial act will not be rendered invalid if, after the effective date of Am. Sub. H.B. 154, the notary public utilizes a seal that designates the specific county for which that notary was commissioned prior to the effective date of the act.