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1. NOTARY PUBLIC COMMISSIONS — EXAMINATIONS — COURT OF COMMON PLEAS' JUDGES MAY REQUIRE APPLICANTS TO PAY REASONABLE FEE.
2. MONEY DERIVED FROM SUCH EXAMINATION FEES, EXCLUSIVE CONTROL, COMMON PLEAS COURT — UNLESS REQUESTED BY COURT, NOT SUBJECT TO AUDIT BY BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES — SECTION 120 GENERAL CODE.

SYLLABUS:

1. The judges of a court of common pleas may require applicants for notary public commissions to pay a reasonable fee for the privilege of taking an examination to determine their qualifications for such office.

2. The money derived from such examination fees is within exclusive control of the common pleas court and is not subject to audit by the bureau of inspection and supervision of public offices unless the court requests such audit.

Columbus, Ohio, March 4, 1942.

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

Gentlemen:

You have requested my opinion with respect to the rule of court proposed to be adopted by the Cuyahoga County Court of Common Pleas relative to a fee to be charged applicants for notary public commissions. With your request you have enclosed a copy of a letter from Hon. Homer G. Powell, one of the judges of the Court of Common Pleas of Cuyahoga County, in which the proposed rule is outlined in detail. You have also furnished me with a copy of Rule 39 of the Rules of Court of the Court of Common Pleas of Cuyahoga County as it presently exists.

In substance, this rule provides that there shall be appointed by the court sixty members of the bar to conduct examinations of all applicants for appointment as notaries public for the purpose of determining whether such applicants possess the qualifications necessary to the proper discharge of the duties of such office. The rule further provides that none of the judges shall consider or act upon the application of any

person to become a notary public unless there shall first be submitted to such judge an application in writing from the applicant, together with a report of the committee. In case the committee's report is adverse, the rule provides for hearing before one of the judges of the court.

In his letter, Judge Powell states that it has been the practice of the committee to examine the applicants in writing and such procedure has necessarily entailed a certain amount of expense. It is now proposed to supplement the rule by requiring each applicant to pay an examination fee of approximately \$3.50 in order that he may have the privilege of taking such examination.

Section 120, General Code, provides:

"Before the appointment is made, the applicant shall produce to the governor a certificate from a judge of the common pleas court, court of appeals, or supreme court, that he is of good moral character, a citizen of the county in which he resides, and if it be the fact that applicant is an attorney-at-law duly qualified and admitted to practice in this state, and possessed of sufficient qualifications and ability to discharge the duties of the office of notary public. No judge shall issue such certificate until he is satisfied from his personal knowledge that the applicant possesses the qualifications necessary to a proper discharge of the duties of the office, or until the applicant has passed an examination under such rules and regulations as the judge may prescribe. If the applicant is admitted to the practice of law in this state, this fact shall also be certified by the judge in his certification."

This section does not in terms authorize a fee for the privilege of taking the examination, but it does prescribe that such examination shall be "under such rules and regulations as the judge may prescribe." I believe that this language is sufficiently comprehensive to authorize the judges of the court of common pleas to require the applicants who seek to take the examination to pay a reasonable fee for such privilege.

Sections 1698 and 1700, General Code, respectively provide:

Section 1698:

"No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action, or proceeding, in which he is not a party concerned, either by using or subscribing his own name, or the name of another person, unless he has been admitted to the bar by order of the supreme court, or of two judges thereof. Such court

shall fix times when examinations shall take place, which may be either in term or vacation, and prescribe and publish rules to govern such examination. This section shall not apply to persons admitted under pre-existing laws.”

Section 1700:

“When a person applies to the supreme court for admission to the bar, he shall be examined as to his fitness and qualifications, by the court or two of the judges. If on examination the court or judges are satisfied that he is of good moral character, has a competent knowledge of the law, and sufficient general learning, an oath of office shall be administered to him, and an order made on the journal that he be admitted to practice as an attorney and counselor at law in all courts of record of this state. But the supreme court may appoint a commission composed of not less than three persons learned in the law to assist in such examination, and to serve for one or more years.”

Pursuant to these provisions, the supreme court has provided in its rules for the appointment of ten attorneys and counselors at law to be known as the Bar Examining Committee who conduct the examinations of applicants for admission to the bar. See Sections 1, 2 and 3 of Rule XIV of the Rules of Practice of the Supreme Court of Ohio. Each person applying to take the examination is required to pay an examination fee upon making such application. See Sections 8 and 12 of such Rule XIV.

There is no provision of law authorizing the court to require such examination fee except the provision in Section 1698, General Code, *supra*, which authorizes the court to “prescribe and publish rules to govern such examination.” Nevertheless, this has been the practice for a great many years and the power of the court to fix such examination fee has never been questioned.

The language of Section 1698, General Code, which authorizes the supreme court to prescribe rules for the conduct of the examination of applicants for admission to the bar, is quite similar to that of Section 120, General Code, which authorizes judges of the common pleas courts, courts of appeals and the supreme court to prescribe rules and regulations for the examination of applicants who desire to be commissioned as notaries public. Since the supreme court has construed the language in Section 1698, General Code, as authorizing it to require a fee to be paid for the privilege of taking an examination, it would seem that the same construction should be given to Section 120, General Code, and that the Court of Common Pleas of Cuyahoga County may require an applicant

for a notary public commission to pay a reasonable fee in order to take the examination to determine his qualifications.

The supreme court has treated the money derived from the fees charged applicants for admission to the bar as within its exclusive control. It has also taken the position that such money is not subject to audit by the auditor of state by reason of any provision of law and for a great many years no such audit was made. For a number of years, however, the supreme court has not only permitted but requested that such fund be audited by the auditor of state, not because of any provision of law but apparently because it considered it a good business practice. Here again, I think that this precedent is applicable to the question you propound. The money accumulated by reason of the fees proposed to be charged applicants for notary public commissions will be within the control of the court and it may disburse same as it sees fit. There is no provision of law which requires an audit of such fund. However, there seems to be no objection to your bureau making an audit if the court requests it to do so.

I am therefore of the opinion that the Court of Common Pleas of Cuyahoga County may amend its rule in the respects mentioned herein and that it may exercise exclusive control over the money derived from the proposed examination fees.

Respectfully,

THOMAS J. HERBERT
Attorney General.