3452.

NOTARY PUBLIC—LEGAL NAME UNDER WHICH COMMISSIONED MUST APPEAR—MARRIAGE AS AFFECTING LEGAL SURNAME.

SYLLABUS:

1. *A notary public is required to have appear near his signature to each and every document signed by him in his official capacity as a notary, his correct legal name under which he was commissioned as a notary, either by having the name printed, typewritten or stamped in legible printed letters or by having it appear on the seal which he affixes to said document.*

2. *If, by reason of marriage or otherwise, the name of a person is legally changed after he or she is commissioned a notary public and during the life of said commission, the said notary, when signing documents as such notary, should cause it to appear by some means or other that the signature is that of the same person who had been commissioned as a notary under the name appearing on the seal or in printed, typewritten or stamped printed letters near the signature.*

3. *After marriage, a woman's legal surname is that of her husband.*

COLUMBUS, OHIO, July 23, 1931.

HON. GEORGE WHITE, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—This will acknowledge receipt of the following communication submitted over the signature of Marion A. Rose, Commission Clerk to the Governor:

> "On numerous occasions this office has been confronted with the proposition whether a female notary public who marries during the course of her appointment, should sign her married name or sign the name under which she applied for her commission in performing her notarial duties.
>
> We would appreciate it if you would render an opinion on the above proposition so that the same might be set up in printed form, to be used where the occasion demands."

It is well settled that a woman is eligible to be appointed a notary public as well as a man, whether she be married or single. If such an appointment is conferred upon a single woman, and she later marries, her status as a notary is in no wise disturbed, as no provision is made by statute or otherwise whereby she would forfeit or surrender the office upon marriage, nor is the marriage of a notary made grounds for the revoking of her commission or for ousting her from office.

The commission granted to a person when appointed to the office of notary public must be recorded in the office of the clerk of courts of each county for which the notary is appointed. A person, so appointed, is required to provide himself or herself with a seal to be used in connection with his or her signature upon documents, which seal shall contain thereon the emblem of the State of Ohio, the words "notary public,' "notarial seal" or words to that effect, the name of the notary and the county for which he or she is commissioned, provided, that the name of the notary public may, instead of appearing on the seal, be printed, typewritten or stamped in legible, printed letters near the signature of such notary on each and every document by him or her signed. Section 123 of the General Code.

The purpose of recording the commission and having the notary's name appear on the seal or in legible characters near the signature is for the purpose of ready proof that the notary assuming to act as such is duly authorized so to do; and manifestly, the signature of the notary to acknowledgments and certifications which he is authorized to make should serve to identify the person so signing as being the same person to whom a notarial commission had been given.

If, after marriage, a woman notary should sign certifications with the name which she then bears, without any notation or indication of the fact that the name is that of a married woman and that she is the same person who had been duly commissioned to act as a notary, there would be no way to establish, without outside proof, the fact that the certification was made by a person duly authorized to do so, and would lead to endless confusion. The name on the seal of a notary or the name legibly stamped or printed near the signature on documents signed by him, should, in my opinion, be the name under which he had been commissioned, and if the signature does not correspond with this, or does not in some way indicate that the person signing is the person whose name appears as the person commissioned as a notary, it would prima facie indicate that the certification had been made by someone other than a duly commissioned notary and would cause a great deal of inconvenience and confusion, to say the least.

Marriage does not change the personality of a woman. She is the same person after marriage as before, although her identification, as indicated by a legal name, is different.

Although there is no specific statute in Ohio that a wife takes her husband's surname upon marriage, it is well settled that she does so. *Uihlein et al.* v. *Gladieux,* 74 O. S. 232. Section 11990, General Code, provides in substance, that a married woman may, under certain circumstances, have restored to her by a court the name she bore before marriage. This is a clear recognition of the fact that upon marriage her name had become changed. Under a statute almost identical with the Ohio statute referred to above, the Supreme Court of Massachusetts, in the case of *Bacon* v. *Boston Elevated Railway Company,* 152 N. E., 35, held:

> "In view of G. L. c. 208, Section 23, as a matter of law, after marriage, a woman's legal name is that of her husband."

See also in point, *State* v. *Richards,* 42 N. J. L. 69; *State* v. *Ketterer,* 59 Ind. 572; *Brown* v. *Reinke,* 159 Minn. 458, 35 A. L. R. 413 note; *D'Autremont* v. *Anderson Iron Works,* 104 Minn. 165, 17 L. R. A., N. S. 236 note.

Clearly then, if a married woman who had been commissioned as a notary, before marriage, under her maiden name, should use as her signature her legal name which she bears after marriage, it would not correspond with the name under which she had been commissioned and which appears on her seal which is to be printed or typewritten in connection with her signature. She has a perfect right to use that legal name as her signature, as there is no law requiring her to use her maiden name after marriage for any purpose and no law to prevent her from using her legal name which she acquires upon marriage, under any circumstances.

As a matter of practice, however, and for the sake of identification, a woman should, when using her legal married name as a signature to documents when making certifications as a notary public, indicate by some means that the signature is the signature of the same person who had been duly commissioned as a notary public and whose name appears on the notarial seal or by printed or typewritten characters used in conjunction with the signature, and which she is required to attach. The usual method of doing this is by the use of the word "nee" indicating that the name is that of a married woman, although some other method

would, no doubt, serve the purpose as well. The word "nee" is a French word, derived from the Latin "nata" past participle of "nasci", to be born. It is defined by Webster, as follows:

> "Born:—Used in introducing the maiden family name of a married woman; as Madam de Stael, nee' Necker."

For instance, if a woman by the name of Mary Smith were commissioned as a notary public, and later, during the term of her commission as such notary public under the name of Mary Smith, she should acquire by marriage the legal surname of Jones, the proper way for her to sign certifications as a notary public thereafter would be Mary Jones (nee Smith). It perhaps might be done otherwise, by the use of the title "Mrs." before the name of Mary Jones, followed by the words "formerly, Mary Smith."

There is no law requiring this to be done and I know of no means whereby an executive order with reference to the matter could be enforced. However, an indication by the Governor, of his desire to have notaries conform to such a request, would no doubt serve to accomplish the purpose.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3453.

WEIGHTS AND MEASURES—COUNTY AND STATE SEALER—FEES FOR SEALING AND MARKING—DISCUSSION OF VARIOUS RELATED QUESTIONS.

COLUMBUS, OHIO, July 23, 1931.

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

GENTLEMEN:—This will acknowledge the receipt of your recent communication, which reads:

> "Under date of January 13, 1930, you rendered an opinion to the Prosecuting Attorney of Madison county, being Opinion No. 1393, in which it was held:
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> 'Under the provisions of section 2623, General Code, providing that the county sealer of weights and measures may receive fees for his services, it is mandatory that such fees be charged.'
>
> 1. What fee shall be charged for the sealing of the following kinds of weights and measures:
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> Computing scales, counter scales, spring scales, wagon scales, platform scales, gasoline pumps, oil pumps, wheel load weighers, taxi meters, oil bottles (ruled as measures), oil bottles (ruled as not measures), milk bottles (in large quantities), vehicle tanks, berry boxes (in lots), and fruit baskets (in lots that conform to federal law).
>
> 2. How many charges can be made in a year?
>
> 3. When and by whom should collection be made?
>
> 4. What can be done when a person refuses to pay the fee?
>
> 5. What other compensation for marking weights and measures are allowed?"