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ATTORNEY AND COUNSELLOR AT LAW — ENTITLED TO APPLY FOR AND RECEIVE EITHER STATE-WIDE OR COUNTY-WIDE NOTARIAL COMMISSION OR BOTH — SECTIONS 119, 123, 124 GENERAL CODE — HOUSE BILL 177, 94 GENERAL ASSEMBLY.

SYLLABUS:

By reason of the provisions of Sections 119, 123 and 124 of the General Code, as amended in House Bill No. 177 by the Ninety-Fourth General Assembly, an attorney and counsellor at law is entitled to apply for and receive either a state-wide notarial commission or a county-wide notarial commission, or both.

Columbus, Ohio, December 31, 1941.

Hon. John W. Bricker, Governor, State of Ohio,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of a request for my opinion, over the signature of your executive secretary, which reads in part as follows:

“A question has been raised whether an attorney at law is entitled to receive both a state-wide notarial commission and a county-wide commission providing he complies with the legal requirements incident to each type of commission.”

House Bill No. 177, passed by the Ninety-Fourth General Assembly, is entitled “An Act to amend Sections 31, 119, 120, 122, 123, 124 and 126 of the General Code, relative to notaries public” and to repeal Sections 31, 119, 120, 122, 123, 124 and 126 of the General Code.

With the exception of Section 119, General Code, it is unnecessary, for the purposes of this opinion, to set forth in detail the various sections enumerated in the title of the above act. It is sufficient to say that in such sections specific and detailed provisions are contained pertaining to the requirements of an applicant, tenure of office, oath, seal, recordings of commission and powers of a notary public. Section 119, *supra*, reads as follows:

“The governor may appoint and commission as notaries public as many persons as he may deem necessary who are citizens of this state, of the age of 21 years or over, and residents of the counties for which they are appointed; but citizens of this state of the age of 21 years or over, whose post office address is a city or village, situated in two or more counties of the state, may be appointed and commissioned for all of the counties within which such city or village is located; *and also provided that a citizen of this state, who is admitted to the practice of law as an attorney and counsellor in this state, may be appointed and commissioned as a notary public for the state of Ohio.* The governor may revoke a commission issued to a notary public upon presentation of satisfactory evidence of official misconduct or incapacity.”

In approaching your inquiry, it is necessary to bear in mind that Section 119, *supra*, as it read prior to the amendment, provided for but

one form of notarial commission. This commission was confined in its application to the county of the notary's residence, which could be held by any persons, lawyer or layman, who were citizens of this state, of the age of 21 years or over, and residents of the county for which they were appointed. Section 119, supra, as amended by the Ninety-Fourth General Assembly, includes the language of the former section, and in addition thereto, an amendment which creates a second and different type of commission. Said amendment reads as follows:

“ * * * and also provided that a citizen of this state, who is admitted to the practice of law as an attorney and counsellor in this state, may be appointed and commissioned as a notary public for the state of Ohio.”

It is a fundamental rule of statutory construction that sections and acts in *pari materia* should be construed together as if they were a single statute. An act under consideration should be construed in its entirety. This is to say, the whole act should be examined and considered. Therefore, it is necessary, in order to ascertain the meaning of the amendatory language inserted by the General Assembly in Section 119, supra, to consider the language used in its sections which are in *pari materia* with said section.

Section 123 of said act, which requires every notary to provide himself with a seal, reads in part as follows:

“ * * * Said 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 such notary public and the county or counties for which he is commissioned, or if an attorney *and commissioned for the whole state*, the words for the ‘State of Ohio’.” (Emphasis mine.)

Section 124 of said act reads in part as follows:

“Before entering upon the duties of his office, a notary public shall leave his commission with the oath indorsed thereon with the clerk of the court of common pleas of the county in which he resides, and of each county for which he is appointed, but if an attorney *and commissioned for the whole state*, the record in the county of his residence shall be sufficient. * * *” (Emphasis mine.)

The fact that the General Assembly, in each of the above quoted sections, used the language above emphasized clearly shows that that

body recognized that an attorney at law might be commissioned for a county, as well as for the whole state. If such was not the case there would have been no necessity for the use of said language. In other words, if an attorney at law could only receive a commission for the whole state the words "and commissioned for the whole state" would be entirely superfluous. In this regard it must be borne in mind that the use of needless tautology should never be ascribed to a law making body. On this point it is stated in 37 O.Jur. at page 616:

"It is to be presumed that one paragraph of a statute is not a needless repetition of another, and courts should hesitate in ascribing careless and needless tautology to the law making body. Hence a construction is not favored which would render a part of a statute superfluous or a work of supererogation."

Therefore, in specific answer to your inquiry it is my opinion that by reason of the provisions of Sections 119, 123 and 124 of the General Code, as amended in House Bill No. 177 by the Ninety-Fourth General Assembly, an attorney and counsellor at law is entitled to apply for and receive either a state-wide notarial commission or a county-wide notarial commission, or both.

Respectfully,

THOMAS J. HERBERT,
Attorney General.