

Opinion No. 69-79

July 18, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Mark B. Thompson, III
Assistant Attorney General

TO: Honorable Max Coll, State Representative, Chaves County, P.O. Box 1818,
Roswell, New Mexico

QUESTIONS

QUESTIONS

May a notary public reappointed to that office after June 20, 1969 continue to use his notary seal for official acts even if the seal contains the name of a New Mexico county in addition to the words New Mexico or abbreviation thereof?

CONCLUSION

Yes.

OPINION

{*122} ANALYSIS

The 1969 New Mexico Legislature enacted a law greatly simplifying statutes pertaining to notaries public. N.M. Laws, 1969, ch. 168. Included among the major changes is a provision making the office a statewide office as opposed to a county office. Compare Laws 1961, ch. 56, § 1 and Laws 1969, ch. 168, § 1. Another major change eliminates the keeping of "a true and perfect record" of official acts, a law which was honored more by its breach than by its observance. See Laws 1909, ch. 55, § 11.

With some exceptions, the 1969 act created an entirely new notary public law. Therefore, on June 20, 1969, the effective date of the new law, all notaries public holding office under a commission issued previous to that date came under the provisions of the new law. A savings clause provided that the term of the notary public holding office prior to the new law continued until its expiration under the original appointment. Laws 1969, ch. 168, § 13.

Because under the previous law a notary public was appointed for a specific county, he was required to have a seal which contained the name of the county. Laws 1909, ch. 55, § 5. The new act provides that each notary public shall have a seal containing his name and the words "Notary Public -- State of New Mexico". Laws 1969, ch. 168, § 5. Since the 1969 act applies to all notaries public presently holding commissions, and since those notaries public must apply for reappointment "in the same manner as

required for an original application," Laws 1969, ch. 168, § 8, are they required to have a new seal with the words Notary Public -- State of New Mexico?

By analogy, Opinion of the Attorney General, No. 6210, dated June 30, 1955 is authority for the conclusion that a new seal is required. That opinion held that if a notary public removed himself from his original county and filed his commission and bond in the new county as provided by Laws 1909, ch. 55, § 16, he could use his old seal only until he applied for a renewal of his commission.

We are persuaded that the reasoning of the 1955 Opinion would not apply to the instant case. In the first place, there is substantial compliance with the law by virtue of the fact that the words New Mexico or initials N.M. are contained on the old seals. The surplusage in the form of a county name would not appear to be a fatal defect. See generally Annot. 7 A.L.R. 1663 (1920).

Furthermore, notaries public now clearly have statewide authority and need only notify the Secretary of State of the change of address. See Laws 1969, ch. 168, § 10. In 1955, the notary had to officially change his county of residence before he could continue to act after moving. See Laws 1967, ch. 104, § 1.

Finally, we fail to see how any official act of the notary public can be jeopardized or any person misled by the inclusion of the name of a county on the seal. For even under the prior law, a notary public could act outside the county of his appointment. **State v. Parker**, 34 N.M. 486, 285 P. 490 (1930).