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OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Will Mann Richardson  
Assistant Secretary of State  
Austin, Texas

Dear Sir:

Opinion No. 0-4376

Re: Secretary of State cannot be required to furnish a list of those appointed notaries public nor to permit examination of his records prior to completion thereof.

Your request for an opinion reads:

"The Southern Guaranty Company, Ltd. has requested through their attorney that we make available to them all of our records under Article 5949 of the Revised Civil Statutes as amended dealing with the appointment of notaries public.

"The procedure of appointing notaries at this time is for all interested persons to write to this office requesting appointment. We then notify the county clerk of the appointment and ask him to see that they are qualified and that they are sworn in and send us the \$1.00 fee. We then issue a commission to the notary. Until the money has been received and the commission is issued, we do not feel that the person has become a notary and we do not have our records arranged in such a way that we could furnish a list of all persons appointed before they have been qualified.

"We do not feel that it would be to the best interest of the public if we did give out such a list as it would be confusing to a great many persons who would assume that any person so named was already a notary public.

"The corporation states specifically that the only reason they wish this information is in order that it may write to those persons and try to obtain the business of furnishing a notary bond. We do not feel that that is sufficient reason for giving out this information or allowing the corporation access to our records to compile such a list.

"We would appreciate an opinion from your Department as to whether our records should be open to the bonding company before the notary qualification has been completed."

Article 5949, Vernon's Annotated Civil Statutes, reads:

"The Secretary of State of the State of Texas shall appoint a convenient number of notaries public for each county. Notaries public may be appointed at any time, but the terms of all notaries public shall end on June 1st of each odd numbered year. To be eligible for appointment as notary public a person shall be at least twenty-one (21) years of age and a resident of the county for which he is appointed. (An amended Acts 1939, 46th Leg., p. 498, § 1.)"

Nothing is found in Title 99 of which the above Article is a part which makes a list of notaries public appointees a public record. Paragraph 5 of Article 4331, Vernon's Annotated Civil Statutes, makes it the duty of the Secretary of State to "keep in a separate suitable book a complete register of all the officers appointed or elected in this State, and commission them when not otherwise provided by law." A notary public has been held to be a public officer. 20 R. C. L. 326. Hence we believe it to be the duty of the Secretary of State to prepare and keep a list of all notaries public. One is not a notary public nor a public officer, however, until he has, pursuant to his appointment, taken his oath, executed bond and been granted his commission and the Secretary of State would not be required to prepare his list until the completion of the process of qualification.

After the completion of the notary's qualification the Secretary of State is required by Article 5950, Vernon's Annotated Civil Statutes, to prepare and "furnish each county clerk a printed list of all notaries public so appointed and qualified; that said clerk shall preserve said list for public inspection and post a copy thereof on the courthouse door".

There is no statute giving any person the right to require you to furnish them a list of the appointees nor none giving members of the public the right of inspection. A careful consideration of the authorities, however, would lead us to the conclusion that the public would have a right at common law to require a list to be furnished or to make reasonable inspection of such records. Such line of cases could not here govern, however, because you state that you have not yet received your fee in many cases and have not issued commissions; that your records are not so arranged as to enable you to furnish a list of those who have been appointed but not yet qualified. Such state of facts being true, you could not be compelled to furnish something not yet available.

It is our opinion that you could not be required to furnish the information requested by applicant nor to permit their agents to examine and prepare lists from your incompleated files if, in the exercise of your discretion, you should conclude that such would interfere with the orderly execution of your duties.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED APR 1, 1942  
*W. Mann Richardson*  
SECRETARY OF STATE

By *Lloyd Armstrong*  
Lloyd Armstrong  
Assistant

LA:mp

