



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

March 19, 1962

Honorable Mack Wallace
County Attorney
Henderson County
Athens, Texas

Opinion No. WW-1281

Re: Whether a physician who is a Notary Public can acknowledge the application for an absentee ballot and then issue the disability certificate as a physician.

Dear Mr. Wallace:

We are in receipt of your request for opinion on the above captioned question. Your problem, stated more in detail, is as follows:

"An osteopathic physician has informed me that he intends to make application for a Notary Public's commission and that it is his intention to issue disability certificates to people who wish absentee ballots and at the same time be the Notary who acknowledges the application for the absentee ballot."

Subdivision 2 of Article 5.05 of the Election Code of Texas states as follows:

"An elector desiring to vote absentee shall make written sworn application for an official ballot to the county clerk of the county of his residence, which application shall be signed by the elector, or by a witness at the direction of said elector in case of the latter's inability to make such written application because of physical disability. Such application shall state the ground on which the applicant is entitled to vote absentee and in case of an application by mail shall give the necessary information to enable the clerk to determine whether the applicant is entitled to vote by mail. Such application shall be accompanied by the poll tax receipt or exemption certificate of the elector, or, in lieu thereof, his affidavit in writing that same has been lost or mislaid. If the ground of application be sickness or physical disability by

reason of which the elector cannot appear at the polling place on election day, a certificate of a duly licensed physician or accredited Christian Science practitioner certifying as to such sickness or physical disability shall accompany the application, which certificate shall be in substantially the following form:

"This is to certify that I have personal knowledge of the physical condition of _____, and that because of sickness or physical disability ___he will be unable to appear at the polling place for an election to be held on the _____ day of _____, 19__.

"Witness my hand at _____, Texas, this _____ day of _____, 19__.

(Signature of Physician)

"Any person who requests a physician to execute a certificate for another person without having been directed by such other person to do so, and any physician who knowingly executes a certificate except upon the request of the voter named therein or upon the request of someone at the voter's direction, and any physician who knowingly delivers a certificate except by delivering it to the voter in person or by mailing it to the voter at his permanent residence address or the address at which he is temporarily living, shall be guilty of a misdemeanor and upon conviction shall be fined not more than Five Hundred Dollars (\$500) or imprisoned in the county jail for not more than thirty (30) days, or both so fined and imprisoned."

The case of Morris v. Dunn, 164 S.W.2d 562 (Civ. App. 1942) concerned a situation wherein a candidate in a general election himself served as the Notary Public for citizens voting by absentee ballot. The argument was developed there that a party to an instrument, no matter how small or nominal is his interest therein, cannot act as a Notary Public. Nevertheless, the court held in this case that there was no express prohibition against the

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propriety of such an acknowledgment, or the counting of such ballots. This was, of course, in the absence of any fraud or undue influence.

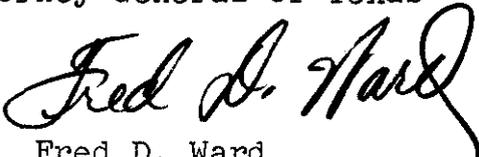
The provision of the Election Code, quoted above, in providing for the application for absentee ballots to be sworn to, and in providing for the certificate of a duly licensed physician, contains no prohibition or language to indicate that the same person may not assist in both these capacities. Nor are we aware of any other provision or law requiring separate individuals for notarial acknowledgments and physician's certifications.

S U M M A R Y

A physician who is a Notary Public can acknowledge the application for an absentee ballot and then issue the disability certificate as a physician.

Very truly yours,

WILL WILSON
Attorney General of Texas

By: 
Fred D. Ward
Assistant

FW:jkr

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

John Reeves
Arthur Sandlin
Vernon Teofan
Robert Rowland

REVIEWED FOR THE ATTORNEY GENERAL

BY: Houghton Brownlee, Jr.