



THE ATTORNEY GENERAL OF TEXAS

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March 23, 1977

The Honorable Tim Von Dohlen
Chairman
House Committee on Constitutional
Amendments
State Capitol
Austin, Texas 78701

Letter Advisory No. 123

Re: Whether notaries
public may be given
statewide jurisdiction
and four year terms of
office.

Dear Chairman Von Dohlen:

You have requested our opinion concerning whether a constitutional amendment would be necessary to give notaries public statewide jurisdiction and four year terms of office.

Article 4, section 26(a) of the Texas Constitution provides in part:

The Secretary of State shall appoint a convenient number of Notaries Public for each county who shall perform such duties as now are or may be prescribed by law.

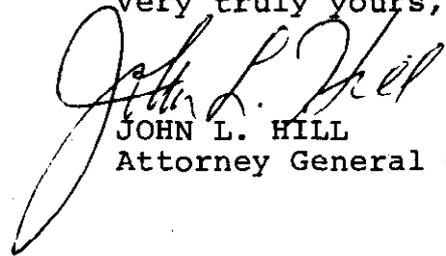
Your first question is whether the language "for each county" constitutes a constitutional limitation upon the jurisdiction of notaries public.

In Loden v. Carothers, 85 S.W.2d 291 (Tex. Civ. App. -- Texarkana 1935, no writ), the court relied upon a statutory "implication" in holding that a notary public's authority is limited to the boundaries of the county for which he is appointed. The court followed Daugherty v. McCalmont, 41 S.W.2d 139 (Tex. Civ. App. -- Ft. Worth 1931, no writ), wherein the rule was stated but no authority cited. In United Services Automobile Association v. Ratterree, 512 S.W.2d 30 (Tex. Civ. App. -- San Antonio 1974, writ ref'd n.r.e.), the court repeated the limitation, relying upon article 5949, V.T.C.S.

Thus, the Texas courts have viewed the territorial limitations of the authority of notaries public as a matter of statutory law. Even prior to an express statutory declaration, the courts did not rely upon article 4, section 26 of the Constitution. The language of article 4, section 26 does not expressly limit the jurisdiction of notaries public. Accordingly, in our opinion a constitutional amendment would not be necessary in order to give notaries public statewide jurisdiction; a statute so providing would in our view be constitutional. See Ga. Const. art. 7, §8; Southern Security Co. v. American Discount, 191 S.E. 258 (Ct. App. Ga. 1937).

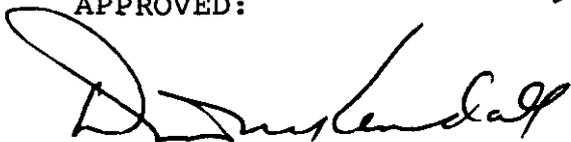
Your second question is whether a constitutional amendment would be necessary to provide for four-year terms of office for notaries public. Article 16, section 30 of the Texas Constitution provides that "the duration of all offices not fixed by this Constitution shall never exceed two years. . . ." Article 16, section 40 of the Constitution clearly contemplates that notaries public hold a "civil office of emolument." In Kumpe v. Gee, 187 S.W.2d 932 (Tex. Civ. App. -- Amarillo 1945, no writ), the court noted that "[t]he office of notary public is of ancient origin." Id. at 934 (Emphasis Added). Thus, it seems clear that at the time of adoption of article 16, section 30 notaries public were understood to hold an "office." Accordingly, the term of their office is controlled by article 16, section 30 and may not exceed two years except by constitutional amendment.

Very truly yours,

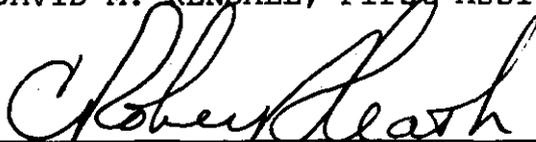


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APPROVED:



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