

The State of Texas



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Hope Andrade  
Secretary of State

January 2, 2009

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The Honorable Greg Abbott  
Attorney General of Texas  
Post Office Box 12548  
Austin, Texas 78711-2548

JAN 16 2009

OPINION COMMITTEE

FILE # ML-45972-09  
ID # 45972

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Dear General Abbott,

The secretary of state's office, as the agency charged with commissioning Texas notaries public, has received a number of inquiries relating to the authority of a private employer, such as a bank, to control the notarial services performed by its employees. In particular, the following questions have arisen:

1. May a private employer limit the notarial acts performed by its employees during work hours?
2. If an employer pays for the bond, commission, seal (stamp) and record book, does the employer have the right to keep these materials at the end of the notary's employment?

*Ability of private employer to restrict the notarial acts performed by employees:* We have recently had calls or emails from two separate members of the public relating to Question 1. The first inquiry related to the ability of a bank to allow its employees to only notarize documents for customers of the bank. The second inquiry related to the ability of a bank only to allow its employees to notarize certain types of documents. In particular, the bank would not allow its employees to notarize documents relating to wills, or to other notarizations that would cause them to be called into court.

Our office has been relying on Tex. Atty. Gen. Op. LO-88-34 when questions arise as to the responsibility of a government employee to notarize documents for the general public. However, it is unclear the extent to which that opinion applies to the ability of private employers to restrict the notarial activities of their employees.

There may be a conflict in this area between the rights of an employer to control the activities of its employees during work hours and the duty of a notary public as a public official to serve the public. There does not appear to be a consensus among the states on this issue. Under the Model Notary Act<sup>1</sup> notaries are not commissioned for the purpose of notarizing for only an employer. A notary is a public servant and should be available to serve all members of the public that requests the services of the notary and pays the fees.<sup>2</sup> Notably, in response to an inquiry by the Oklahoma Secretary of State, the Oklahoma Attorney General's office has issued

<sup>1</sup> National Notary Association, *Model Notary Act*, Sept. 1, 2002, available at [http://www.nationalnotary.org/UserImages/Model Notary Act.pdf](http://www.nationalnotary.org/UserImages/Model%20Notary%20Act.pdf).

<sup>2</sup> *Id.* at 29-30, cmt.

an opinion on issues similar to those presented above, and concluded that “[a]n employer can prevent a notary from performing notarial acts for other entities during employment hours, but cannot restrict the notary (as a ministerial officer) from performing lawful notarial acts outside employment hours.”<sup>3</sup> The opinion of the Oklahoma Attorney General appears to be in line with Tex. Atty. Gen. Op. LO-88-34.

*May an employer retain the notary materials of an employee upon termination of employment?* We often receive questions relating to Question 2 from notaries who have changed employment and their prior employers, who may have or have not paid for the notary bond, commission, seal, and notary record book, refuse to allow the notary to take the seal and/or notary record book at the termination of employment. When an employer retains the seal of a notary, the notary cannot perform any subsequent notarizations without first obtaining a new seal because every notarial act must be authenticated by attaching the seal.<sup>4</sup> Additionally, when an employer retains the notary record book, a notary is no longer able to comply with the duty to provide copies of the record book to the public upon notice.<sup>5</sup> This adversely affects both the notary and the general public. A notary who is unable to provide copies from a notary record book is subject to disciplinary action by the secretary of state for “failure to fully and faithfully discharge any of the duties or responsibilities required of a notary public[.]”<sup>6</sup> If unable to obtain copies of the notary’s record book, the general public may be hindered in proving the validity of a notarization.

The Texas secretary of state commissions individuals as notaries public, not entities or organizations. It is the individual who submits an application, must meet the eligibility requirements, and is commissioned. Although an employer may pay for the bond, application and notary materials, the individual who has been commissioned as a notary public is responsible for properly affixing the seal to authenticate his notarial acts, maintaining the notary record book, and making it available to the public. Allowing an employer to possess the seal and book is at odds with the notary’s sworn duties. However, we have been unable to find any clarification of this particular issue in the statutes, rules, case law, or attorney general opinions addressing notaries public.

We respectfully request that the Texas Attorney General’s office provide clarification on the above stated questions. If you have any questions regarding this request or need further information from the records of this office, please contact Ms. Lorna Wassdorf, Director, Business & Public Filings.

Sincerely,



John Sepehri

General Counsel to Secretary of State Hope Andrade

<sup>3</sup> 2000 OK AG 28, May, 11, 2000, available at

<http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=62857>.

<sup>4</sup> Tex. Gov’t Code §406.013(a)

<sup>5</sup> Tex. Gov’t Code §406.014(b)(c)

<sup>6</sup> 1 Tex. Admin. Code §87.43(a)(5)