

Opinion No. 53-5659

February 4, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Beatrice B. Roach Secretary of State Santa Fe, New Mexico

{*47} This is in reply to your letter of January 28, 1953, in which you request an opinion clarifying the seeming inconsistencies between §§ 11-101 and 11-117 N.M.S.A., relative to official acts by a notary public outside the county in which his bond, commission, and oath are recorded.

It is the opinion of this office that there is no inconsistency between sections 11-101 and 11-117 if they are read, as they must be, in connection with all of Title 1, Art. 11 N.M.S.A., particularly §§ 11-104 to 11-107, inclusive.

Section 11-101, relating to the appointment, term, authority and qualification of notaries public provides, inter alia, that the governor shall appoint at least one notary public in each county and that each appointee shall "have power and authority **anywhere in the state** to administer oaths, certify to acknowledgments and perform all the other duties required . . . by law." (Emphasis supplied).

Section 11-104 provides that each notary, before entering upon the duties of his office, shall take an oath to faithfully discharge his duties and shall give a bond, with sureties, to the state, conditioned upon faithful performance, this bond to be approved by the county clerk of the county where the notary resides. Sections 11-105 to 11-107, inclusive, provide, in summary, as follows: That this bond be recorded with the county clerk, together with the commission, and that an impression of the notary's seal and his signature be deposited with the county clerk; that thereafter the oath and bond required by § 11-104 and an impression of the notarial seal be filed with the Secretary of State; and that any person, damaged by the negligence or misconduct of a notary may maintain a civil action against this bond filed with the Secretary of State, and against the sureties.

Section 11-117 reads as follows:

"Whenever a notary public shall change his place of residence from the county in which he was appointed to another county, he shall, before performing any official act in such county, cause his bond, commission and oath of office to be filed in the office of the county clerk, and for such purpose upon demand the secretary of state shall forward by registered mail to the county clerk designated such bond, commission and oath for record, and it shall be the duty of the county clerk the same as in this section provided to immediately after making such record return the same to the secretary of state, and such recorder shall receive for such record the fees provided for the original record of such papers."

Reading this latter section without regard to §§ 11-101 and 11-104 to 11-107, inclusive it, might appear to be the intention of the Legislature {*48} to require that before a notary may perform any official act in a county other than that in which he was originally appointed, he must file his bond, commission and oath of office with the county clerk of each and every county where he wishes to perform a notarial duty. Considering the sections of the act discussed above, however, it is our opinion that § 11-117 was intended to have no such broad application, and that it is limited to instances where a notary actually changes his residence to a new county.

Section 11-101 reflects the clear intent of the Legislature to provide for the appointment of notaries public in each county of the state. Other sections of the act provide that the bond of the notaries shall be filed with the Secretary of State, but also provide that through the recording of the commissions, seals, signatures and bonds, each county clerk shall have a record of qualified notaries resident in his county. This is the obvious purpose of the recording provisions, in our opinion, and is an intent which § 11-117 does no more than amplify. Certainly there is nothing in this section which abrogates the unequivocal language in § 11-101 that each notary shall have authority "anywhere in the state" to perform his duties.

You make reference to several previous Attorney General opinions on this subject. A review of these earlier pronouncements from this office indicates that this opinion is in accord and consistent with Attorney General Opinions Nos. 892, 1584 and 3151. A different and contrary ruling was made in A. G. Opinion No. 2418, Oct. 30, 1919, and since it is our belief that its conclusion was reached through a misinterpretation of the scope of § 11-117, A. G. Opinion 2418 is hereby expressly overruled.

We hope this opinion answers all your questions on this subject.

By: W. F. Kitts

Assist. Attorney General