

## Opinion No. 62-18

January 29, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Thomas A. Donnelly, Assistant Attorney General

**TO:** Mrs. Betty Fiorina, Secretary of State, Capitol Building, Santa Fe, New Mexico

### QUESTION

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In instances wherein a notary public bond has been recorded with the county clerk wherein the notary resides, but such original bond has been lost and not forwarded to the secretary of state for filing, may the secretary of state accept a certified photostatic copy of such bond in lieu of the original?

#### CONCLUSION

Yes, but see analysis.

### OPINION

#### ANALYSIS

In your letter of inquiry, it is stated that your office has recently determined that a large number of notaries public have failed to file their original bond and oath in the office of the Secretary of State before undertaking to act as a notary public, and that in some cases the bond has been recorded with the county clerk wherein the notary resides, but the original has been lost and not forwarded to the office of the Secretary of State.

Section 35-1-6, N.M.S.A., 1953 Compilation provides as follows:

"Every notary public before entering upon the duties of his office shall provide a notarial seal, containing his name, title of office, and name of the county for which he is appointed, and shall authenticate all his official acts and attestations therewith, **and shall file with the secretary of state the oath and bond provided for in section 3927 (35-1-4) and deposit an impression of his seal.**" (Emphasis added) \_\_\_\_

Section 35-1-4, N.M.S.A., 1953 Compilation sets out:

"Each notary public before entering upon the duties of his office shall take oath to support the Constitution of the United States and to faithfully discharge the duties of his office, and shall give bond to the state with two (2) sureties in the penal sum of \$ 500 conditioned for the faithful discharge of the duties of his office, which bond shall be

approved by the county clerk of the county wherein the notary resides, which approval shall be endorsed upon said bond and signed by the said clerk."

In addition to the above provisions, Section 35-1-7, N.M.S.A., 1953 Compilation requires that before the bond of the notary is filed with the Secretary of State it must be recorded in the office of the county clerk. This section provides as follows:

"Before the bond herein provided for shall be filed with the secretary of state it must be recorded in the office of the county clerk and if any person shall be damaged or injured by an unlawful act, negligence or misconduct of the notary public in his official capacity, the person damaged or injured may maintain a civil action on the official bond of such notary public against such notary and his sureties, and the recovery in such action shall not be a bar to any future action on such bond for other causes up to the full amount of the bond."

Under the above cited statutes, it is evident that the filing of a notary's bond and oath with the Secretary of State is a condition precedent to the lawful and valid exercise of the duties of a notary public.

The statutes above cited, plainly specify that both the bond and oath of the person desiring to qualify as a notary be filed with the Secretary of State, before the notary shall undertake to enter upon the duties of his office. In addition, Section 35-1-4, N.M.S.A., 1953 Compilation, requires that the bond of each notary must be approved by the county clerk of the county wherein the notary resides, which approval shall be endorsed upon said bond and signed by the clerk.

In such instances wherein the applicant may have recorded the bond required by statute with the county clerk of the county wherein he resides, but has failed to forward the bond to the office of the Secretary of State for filing under the provisions of Section 35-1-6, N.M.S.A., 1953 Compilation, because such original bond has been lost, then in such event the Secretary of State may accept for filing in the office of Secretary of State, a certified photostatic reproduction of such bond recorded in the office of the county clerk.

Several legislative enactments specifically provide that photostatic reproductions of original records shall be deemed to be the equivalent of such original records.

Section 71-4-8, N.M.S.A., 1953 Compilation provides:

"Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction in evidence in all courts, or administrative agencies. A transcript, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification, or certified copy of the original."

Section 71-6-15, N.M.S.A., 1953 Compilation, specifies in part as follows:

"Any public officer of the state or any county, municipality, district or political subdivision may cause any or all records, papers or documents kept by him to be photographed, microphotographed or reproduced on film. Such photographic film shall comply with the minimum standards of quality approved for permanent photographic records by the national bureau of standards and the device used to reproduce such records on film shall be one which accurately reproduces the original in all details. Such photographs, microphotographs or photographic film shall be deemed to be original records for all purposes, including introduction in evidence in all courts and administrative agencies. A transcript, exemplification or certified copy, for all purposes, shall be deemed to be a transcript, exemplification or certified copy of the original."

In addition to the above cited statutes, Section 20-2-20 and 21-1-1 (44) (3), provide that copies of any records kept by public officers may be admitted in evidence equally with the originals.

Under the above statutory sections, it is our opinion that the Secretary of State may properly accept for filing in the office of the Secretary of State, a photographic reproduction of such original bond when properly certified by the county clerk. As specified in Sections 71-4-8 and 71-6-15, N.M.S.A., 1953 Compilation, supra, reproduced copies of such original records may be deemed to be original records for all purposes and such legislative provisions would enable a photographic copy to be utilized in place of an original for purposes of satisfying the filing provisions of Section 35-1-6, N.M.S.A., 1953 Compilation.

The acceptance by the Secretary of State of a certified copy of the notary bond in place of the original does not, however, satisfy the statutory requisites necessary for a notary to lawfully enter upon the duties of his office. Section 35-1-6, supra, requires that a copy of the oath of office taken by the notary also be filed with the Secretary of State together with the notary's bond.

In all cases wherein a certified photographic copy of the notary's original bond is filed with the Secretary of State such copy should also clearly reflect thereon the approval of the county clerk of such notary bond, and the signature of such county clerk. The approval and signature of the county clerk of all notary bonds, duly noted upon such bond, is also specifically required of all persons seeking to qualify as notaries public before entering upon the duties of their offices.