

**Opinion No. 45-4757**

July 19, 1945

**BY:** C. C. McCULLOH, Attorney General

**TO:** Cecilia Tafoya Cleveland Secretary of State State of New Mexico Santa Fe, New Mexico

{\*108} We are in receipt of your letter of July 14, 1945 in which you state that it has been the policy of your office to have the beginning date of a notary public as of the date the notary qualifies by filing bond and oath of office, which results in the commission running longer than the appointment. In view of this situation, you ask our opinion as to whether the date of the commission of the notary public should begin as of the date of appointment, or as of the date the notary qualifies by filing the bond and oath of office.

Section 11-101 of the 1941 Compilation provides that the Governor shall appoint notary public for four years.

Section 11-103 provides that the Secretary of State shall issue a commission to each notary public appointed by the Governor.

Section 11-104 requires each notary public, before entering upon the duties of his office, to take an oath and to give bond.

In view of the fact that the Secretary of State is required to issue a commission to each notary public appointed by the Governor, which appointment runs for four years, whether or not a bond is ever given, it is my opinion that the commission should be dated from the date of the appointment, rather than the date of qualification.

The situation is exactly the same in which public officers find themselves. On the first day of January after an election, the elected officer is the officer, but may not enter upon the discharge of his duties until he takes the oath of office and furnishes bond.

Thus, with notary public, after their appointment and the issuance of a commission, they are notary public but are merely prohibited by statute from entering upon the discharge of their duties until they fully qualify by filing their oath and bond.

Trusting the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General