

Opinion No. 45-4793

September 21, 1945

BY: C. C. McCULLOH, Attorney General

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

{*134} Replying to your letter of September 20, 1945, requesting an opinion on the question as to whether a Notary Public may take acknowledgments on conditional sales contracts, the Notary being the seller and. from the letter attached, probably the payee, under the contract.

The only statute I find relating to this matter is Section 11-124 of the N.M. 1941 Compilation, which applies to banks and corporations, and which is as follows:

"* * * Provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer, or employee, where such notary is a party to such instrument, either individually or as a representative of such corporation, or to protest any negotiable instrument owned or held {*135} for collection by such corporation, where such notary is individually a party to such instrument."

The general rule is stated as follows:

"46 C. J., Section 30, 'Disabling Interest.' The general rule is that a notary cannot certify to or act in a matter in which he has a personal interest, although the contrary doctrine has been announced. The nature of an interest which will disable him to act cannot be stated in any general rule, but must be determined in each case from the peculiar facts and circumstances of that case. * * *"

By reason of the foregoing, it is my opinion that the subject of this request should be referred to his local attorney, where he could submit his problem in full in a personal discussion.

By THOS. C. McCARTY,

Asst. Atty. General