

Andrea Gyger

From: SoS Rulemaking
Subject: Re: Help Shape Colorado's Notary Program Rules

From: Jered Morgan [REDACTED]
Sent: Thursday, July 24, 2014 4:51 PM
To: SoS Rulemaking
Subject: Re: Help Shape Colorado's Notary Program Rules

Hello Andrea,

One last thing to add that I almost forgot 12-55-111(d) currently requires us to record "The signature and address of each person" in our journal. The law does not currently specify which address to record (residential, business, mailing or where the recording took place?) -- this should be clarified with the addition of the words mailing or residential before address or 'where the act took place' after the words address if the latter.

Furthermore, if it is the residential address that is intended to be required and not just a mailing address, it should be clarified that as a Notary is a State Officer, they are required to accept and use a substitute address from Address Confidentiality Program participants pursuant to C.R.S. 24-30-2108: "when a program participant submits a current and valid address confidentiality program authorization card to the agency, the agency **shall** accept the substitute address designation by the executive director or his or her designee on the card as the participant's address"

24-20-2103 defines agency as:

"(13) "State or local government agency" or "agency" means every elected **or appointed** state or local public office, public officer, or official; board, commission, bureau, committee, council, department, authority, agency, institution of higher education, or other unit of the executive, legislative, or judicial branch of the state; or any city, county, city and county, town, special district, school district, local improvement district, or anyother kind of municipal, quasi-municipal, or public corporation. "

From: Jered Morgan [REDACTED]
Sent: Thursday, July 24, 2014 4:30 PM
To: ColoSecofState@public.govdelivery.com; SoS Rulemaking
Subject: Re: Help Shape Colorado's Notary Program Rules

Hello,

I submit the following comment. Currently the Notary statutes do not comply with the Colorado Constitution ARTICLE XII Section 8 which requires "Every civil officer, except members of the general assembly and such inferior officers as may be by law exempted, shall, before he enters upon the duties of his

office, take and subscribe an oath or affirmation to support the constitution of the United States and of the state of Colorado, and to faithfully perform the duties of the office upon which he shall be about to enter." The statutes have not specifically exempted Notaries, and they are State Officers whom should be required to take this oath, therefore practically all Notaries Public in this State are de facto officers, I have myself taken the oath via the Teller County Clerk & Recorder and recorded it in that county to satisfy this requirement as a de jure notary, but the statutes should clarify this or modify the current oath to include the one required by our Constitution.

Let it not be mistaken though a Notary Public is a civil office, appointed by the Secretary of State as evidenced by [9 Colorado Reports 628](#) which states "A government office is defined to be a "public station or employment, conferred by the appointment of government. The term embraces the ideas of tenure, duration, emolument, and duties." *U.S. v Hartwell*, 6 Wall. 385-393. An office held under a state government necessarily includes the same characteristics, ***and all of them are comprised in the office of notary public***, as will appear by reference to the several statutory provisions in relation thereto." This is also acknowledged as late as 1975 in [Comptroller General Decision B-173783, OCT 9, 1975](#), which also states "IT SEEMS CLEAR THAT THE POSITION OF NOTARY PUBLIC IN COLORADO FITS THE DEFINITION OF CIVIL OFFICE LONG APPLIED BY THIS OFFICE IN CONSTRUING 10 U.S.C. 973(B), IN THAT IT IS CREATED BY LAW AND HAS CERTAIN DUTIES IMPOSED ON IT BY LAW WHICH INVOLVE THE EXERCISE OF A PORTION OF THE SOVEREIGN POWER. 44 COMP. GEN. 830, SUPRA, AND 29 COMP. GEN. 363, SUPRA. ALSO, CONTRARY TO THE VIEW EXPRESSED BY THE AIR FORCE, IN OUR VIEW THE POSITION OF NOTARY PUBLIC IN COLORADO CLEARLY INVOLVES TENURE, DURATION AND EMOLUMENTS. IN THIS REGARD, IT IS TO BE NOTED THAT THE COLORADO SUPREME COURT HAS SPECIFICALLY HELD THAT THE POSITION OF NOTARY PUBLIC IN THAT STATE IS AN OFFICE. SEE IN RE HOUSE BILL NO. 166, 21 P. 473 (1886). FURTHER, IT IS WELL-RECOGNIZED GENERALLY THAT NOTARIES PUBLIC ARE PUBLIC OFFICERS. SEE 66 C.J.S. NOTARIES SECT. 1, AND 19 COMP. GEN. 951, 953 (1940)."

Read more at: <http://lucky225.wordpress.com/2012/08/06/notary-public-the-unrecognized-state-officer-part-2-oath-of-office-47-2/>

Thank you for your consideration to this important part of the statutes that was erroneously stricken from the statutes around the time when the bond requirement was repealed. I would also suggest that Notaries Public, in order to be more uniform with the rest of the country, should display the State Seal on their stamps which may be regulated by the Secretary of State (i.e. an authorization form required for a print shop to make the stamp) in order to ensure that the stamp is not faked as Notary IDs can easily be looked up and verified but also used to forge real notary stamps.