

OFFICERS:  
COURTS:  
MAGISTRATES:  
NOTARIES PUBLIC:

Probate judge and magistrate may also hold office of notary public, but is not entitled to receive compensation for any duties performed as notary public. Change in population of county changes salary of county officers effective January 1, 1951.

January 10, 1951

Honorable William Lee Dodd  
Prosecuting Attorney  
Ripley County  
Doniphan, Missouri



Dear Sir:

Your letter at hand requesting an opinion of this department, which reads as follows:

"Does the law permit a Probate Judge and Magistrate, who is also a Notary Public, to perform the duties of a Notary Public?"

"Does a decrease in population, 1950, change the salary of a sheriff before the end of his term? In this county, 4th class, the population has fallen below the present salary rate for the sheriff. Will this affect the salary of the present sheriff?"

In considering your first question we should first like to call attention to certain statutes relating to notaries public. Section 13360, R.S. Mo. 1939, in part, provides:

"The governor shall appoint and commission in each county and incorporated city in this state, as occasion may require, a notary public or notaries public, who may perform all the duties of such office in the county for which such notary is appointed and in adjoining counties. Each such notary shall hold office for four years, but no person shall be appointed who has not attained the age of twenty-one years, and who is not a citizen of the United States and of this state.  
\* \* \*"

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Section 13361, R.S. Mo. 1939, relating to the powers and duties of notaries public, provides as follows:

"They may administer oaths and affirmations in all matters incident or belonging to the exercise of their notarial offices. They may receive the proof or acknowledgment of all instruments of writing relating to commerce and navigation, take and certify relinquishments of dower and conveyances of real estate of married women; the proof or acknowledgment of deeds, conveyances, powers of attorney and other instruments of writing, in like cases and in the same manner and with like effect as clerks of courts of record or authorized by law; take and certify depositions and affidavits and administer oaths and affirmations, and take and perpetuate the testimony of witnesses in like cases and in like manner as justices of the peace are authorized by law; make declarations and protests, and certify the truth thereof under their official seal, concerning all matters by them done by virtue of their offices, and shall have all the power and perform all the duties of register of boatmen."

Section 13362, R.S. Mo. 1939, provides for the keeping of certain records relating to the official acts of notaries public.

Section 13363, R.S. Mo. 1939, requires that every notary public shall provide a notarial seal, with the inscription thereon as provided by the statute.

Section 13364, Laws of Missouri, 1945, page 1316, requires that every notary public, before entering upon the discharge of the duties of his office, shall take an oath of office and shall give bond as set forth in the statute.

We find nothing in the Constitution or in the statutes of the State of Missouri which specifically prohibits a probate judge or magistrate performing the duties of a notary public. Nor do we see that any of the duties which may be performed by a notary public would in any way conflict with the powers and duties to be exercised by a probate judge or magistrate that would render the two offices incompatible and thus prevent one person holding both offices and performing the duties in respect to each.

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As a matter of fact, notaries public are empowered to perform certain duties with like effect as clerks of courts of record are authorized to do, and they are authorized to perform other duties in like manner as justices of the peace are authorized by law to do, and said statute would now have reference to magistrates rather than justices of the peace. Thus it would appear that the two offices could function harmoniously.

However, we do call your attention to Article V, Section 24 of the Constitution of Missouri, 1945, which, in part, provides:

" \* \* \* No judge or magistrate shall receive any other or additional compensation for any public service, \* \* \*"

It will be observed that by the foregoing statutes a notary public is given territorial jurisdiction in which he may perform his duties, his office is fixed with a definite term, specific qualifications are provided for said office which a person desiring to be appointed must meet, he must take an oath of office before discharging any of the duties of his office, he must give bond, he must keep certain records, he must provide a notarial seal, and even his powers and duties are provided by statute. It would therefore seem it was intended that the creation of the office of notary public was for a public purpose, and that a person holding said office and in performing the duties thereof would be rendering a public service to those people within his territorial jurisdiction.

Consequently, we believe that a probate judge or magistrate in performing the duties of the office of notary public would be rendering a "public service" within the meaning of Article V, Section 24 of the Constitution, supra, and while a probate judge or magistrate might be permitted to perform the duties of the office of notary public he would not be entitled to receive compensation therefor.

✓ In connection with your second question we might first say that the courts have held that the salary or compensation of a public officer is subject to being altered by a change in population. As a matter of fact, it has been so held in cases wherein the population has increased resulting in an increase in compensation for the official, it being ruled that said increase arising out of a change in population did not violate a constitutional provision prohibiting an increase in compensation during the term of office of a public officer.

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Regarding the situation where the salary is increased by a change in population, the Supreme Court of Missouri, in the case of State ex rel. Harvey v. Linville, 300 S.W. 1066, said at l.c. 1067:

"The increase of salary which a statute permits after an election showing an increase of population is not in violation of the Constitution, in that the salary is increased during the term for which the officer was elected, because the law in force at the time of his election fixes his salary, to be ascertained at periods as changed by the increase in population. State ex rel. v. Hamilton, 303 Mo. 302, 260 S.W. 466."

We further believe that under the law a decrease in population would also operate to decrease the salary of an official which was established by law and determined on population.

Further in regard to this question, we are enclosing a copy of an opinion rendered to Honorable Walter A. Eggers, Probate Judge of Perry County, under date of March 31, 1950, which we believe supplies the information you desire.

In other words, under this opinion the change in salary of the sheriff would become effective as of January 1, 1951.

#### CONCLUSION

It is therefore the opinion of this department that the office of probate judge or magistrate is not incompatible with the office of notary public and that one person would be permitted to hold both offices and perform the duties of each. However, it is our further opinion that a probate judge or magistrate performing the duties of a notary public would be performing a public service within the meaning of Article V, Section 24 of the Constitution of Missouri, 1945, and would not be entitled to receive any other or additional compensation therefor.

It is further the opinion of this department that the salary of a sheriff is subject to change due to a change in population and that said change in salary would become effective as of January 1, 1951.

Respectfully submitted,

APPROVED:

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Enc.