

NOTARY PUBLIC:

When bond becomes insufficient, county clerk or circuit clerk of St. Louis may order new bond and forfeit his office if order is not complied with.

May 26, 1939

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Honorable Dwight Brown
Secretary of State
Jefferson City, Missouri

Dear Sir:

We are in receipt of your opinion request under date of May 24th, 1939, which reads as follows:

"We desire an opinion from your office on the above caption, relative to the status of notary commission where the court has relieved the surety company of liability on the bond covering the George J. Schlueter notary public commission.

"Some days ago we received from the attorneys, Leahy, Walther, Hecker & Ely, a certified copy of the Court Order in the Circuit Court of the City of St. Louis, April term, 1939, in which the petitioner, the Fidelity & Deposit Company of Maryland, sought to be relieved of further liability on the notary bond of George J. Schlueter, because of non-payment of premium due on the bond.

"We immediately notified Mr. George J. Schlueter, 2117a S. 11th St., St. Louis, Missouri, that we were

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in receipt of the copy of the Court Order and ask that he obtain a new bond or return the Commission to H. Sam Priest, Clerk of the Circuit Court, for cancellation. A copy of this letter was also mailed to Mr. Priest.

"Today we are in receipt of a reply from Mr. Priest, a part of which we quote:

"I can only suggest that your office direct Mr. Schlueter to furnish a new bond, or that his commission be returned and cancelled."

"This matter has been referred to the Governor's office without any official action.

"Will you kindly advise at your earliest convenience the proper procedure in this case."

Section 11738, R. S. Missouri 1939, reads as follows:

"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. It shall be the duty of every such notary when he performs an official act outside his or her own county to state in his or

her certificate that the county in which such act is performed adjoins the county within and for which he was appointed and commissioned."

It will be noticed under this section that the power of appointment of a notary public is vested with the Governor and that the term of appointment is for four years.

Section 11742, R. S. Missouri 1929, reads as follows:

"Every notary, before entering upon the discharge of the duties of his office, shall take the oath of office, which shall be indorsed on his commission, shall give bond to the state in the sum of two thousand dollars, except in counties of more than one hundred thousand inhabitants, in which they shall give bond in the sum of five thousand dollars, with at least two good and sufficient sureties, to be approved by the clerk of the county court (in the city of St. Louis such approval shall be by the clerk of the circuit court), which commission, oath and bond shall be filed and recorded in the office of said county clerk, and in the city of St. Louis in the office of the circuit clerk. Said bond, after having been so recorded, shall be filed in the office of the secretary of state, and may be sued on by any person injured; but no suit shall be instituted against any such notary or his sureties more than three years after such cause of action accrued. Sureties on the bond of any notary may be discharged from all future liability on such official bond,

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by petition in writing addressed to the county court (in the city of St. Louis to the circuit court); by conforming to the requirements, with the same rights and remedies as provided by sections 2944 to 2952, inclusive, of chapter 16, R. S. 1929, relating to sureties."

Under the above section the principal must have at least two good and sufficient sureties approved by the clerk of the Circuit Court of St. Louis, Missouri. After the approval has been made by the circuit clerk, it is recorded in his office and the original bond filed in the office of the Secretary of State.

According to your request the Fidelity and Deposit Company of Maryland has been relieved and discharged as surety for the principal, George J. Schlueter, and at this time the bond does not have sufficient sureties. The Fidelity and Deposit Company of Maryland has been relieved and discharged as surety under Sections 2943 to 2950, inclusive, of the Revised Statutes of Missouri 1929. These sections set out the procedure under which the petitioner, Fidelity and Deposit Company of Maryland, was discharged as surety on the notarial bond of George J. Schlueter of St. Louis, Missouri.

Section 11743, R. S. Missouri 1929, reads as follows:

"On the written statement of any citizen, verified by oath, that the bond of any notary has become or is sufficient, said county clerk, and in the city of St. Louis the circuit clerk, shall cite such notary to appear before him, and to give a new and sufficient bond. If said clerk shall find his bond to be insufficient, he shall order a new

bond to be given, and if such new and sufficient bond shall not be given within ten days after said order, such notary public shall forfeit his office, and thereafter cease to exercise the powers and duties thereof."

The above statute is not ambiguous and under the true meaning of the language in the section it specifically sets out the method of the forfeiture of office of a notary public. This section does not need any construction but is very plain and shows the intention of the Legislature as to the procedure to be used in the forfeiture of the office of a notary public.

59 C. J., at page 961, sets out the following:

"In construing a statute to give effect to the intent or purpose of the legislature, the object of the statute must be kept in mind, and such construction placed upon it as will, if possible, effect its purpose, and render it valid, even though it be somewhat indefinite. To this end it should be given a reasonable or liberal construction; and if susceptible of more than one construction, it must be given that which will best effect its purpose rather than one which would defeat it, even though such construction is not within the strict literal interpretation of the statute, and even though both are equally reasonable. Where there is no valid reason for one of two constructions, the one for which there is no reason should not be adopted. The legislature cannot be held to have intended something beyond its authority in order to qualify the language it has used." citing

Betz v. Columbia Telephone Co.,
(App.) 24 S. W. (2d) 224.

In Betz v. Columbia Telephone Co., (App.) 24 S. W. (2d) 224, the Court said:

"To get at the true meaning of the language of the statute the court must look at the whole purpose of the act, the law as it was before the enactment, and the change in the law intended to be made."

Although the above section sets out that any citizen may file an oath that the bond of a notary has become insufficient in that it does not contain the sufficient number of sureties, yet in view of Section 11738, supra, which provides the Governor make the appointment, he should be the most interested and delegate someone to file this oath in the office of the Circuit Clerk in the City of St. Louis. It then becomes the duty of the Circuit Clerk of the City of St. Louis to order a new bond to be given and upon non-compliance with that order his office should be forfeited.

Section 3953, R. S. Missouri 1929, reads as follows:

"If any person shall take upon himself any office or public trust in this state, and exercise any power to do any act appertaining to such office or trust, without a lawful appointment or deputation, he shall, upon conviction, be adjudged guilty of a misdemeanor."

Under the above section after the office of notary public has been forfeited by the Circuit Clerk of St. Louis, if George J. Schlueter should continue to take acknowledgments he would be guilty of a misdemeanor.

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CONCLUSION.

In view of the above authorities it is the opinion of this department that anyone interested in the forfeiture of the office of notary public of George J. Schlueter may file an affidavit in the office of the Circuit Clerk of the City of St. Louis setting out that his bond is insufficient for the reason that the surety has been relieved and discharged by the Circuit Court of the City of St. Louis, and after an order has been given by the Circuit Clerk of the City of St. Louis to the notary public to give a more sufficient bond, then after ten days the circuit clerk shall forfeit his office as a notary public.

It is further the opinion of this department that after the circuit clerk has forfeited the office of notary public, and he continues to take acknowledgments under the forfeited commission he would be guilty of a misdemeanor under Section 3953, supra.

Respectfully submitted

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Assistant Attorney General

APPROVED:

TYRE W. BURTON
(Acting) Attorney General

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