

NOTARIES PUBLIC: An acknowledgment of a collector to deeds for land sold at a tax sale taken by a deputy collector in his capacity as notary public is valid.

January 2, 1940

Hon. Edward V. Long
Prosecuting Attorney
Pike County
Bowling Green, Missouri



Dear Sir:

We are in receipt of your request for an opinion under date of December 26, 1939, which reads as follows:

"The Collector of this County has requested that I secure for him a ruling on the following situation:

"A Clerk employed in his office has made application and has been commissioned a Notary Public. In such application she stated herself as Deputy Collector. On several occasions she has taken the acknowledgment of the Collector to certain deeds for land sold at a tax sale. The Collector desires to know whether or not it is proper for this clerk, as a Notary Public, to take such acknowledgments."

Section 9896 R. S. Missouri, 1929, grants the power to a Collector to appoint deputies, and reads as follows:

"Collectors may appoint deputies, by an instrument in writing, duly signed, and may also revoke any such appointment at their pleasure, and may require

bonds or other securities from such deputies to secure themselves; and each such deputy shall have like authority, in every respect, to collect the taxes levied or assessed within the portion of the county, town, district or city assigned to him, which, by this chapter, is vested in the collector himself; but each collector shall, in every respect, be responsible to the state, county, towns, cities, districts and individuals, companies, corporations, as the case may be, for all moneys collected, and for every act done by any of his deputies whilst acting as such, and for any omission of duty of such deputy. Any bond or security taken from a deputy by a collector, pursuant to this chapter, shall be available to such collector, his representatives and sureties, to indemnify them for any loss or damage accruing from any act of such deputy."

The section dealing with the general powers and duties of a notary public is Section 11739 R. S. Missouri, 1929, which reads 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 are 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."

The question which presents itself at this time is whether or not a person may perform the duty of notary public while holding the position of deputy collector. By constitution or statute, in some jurisdictions, other public offices are incompatible with that of notary, so that one cannot hold both. See *Blencourt v. Parker*, 27 Tex. 558. There are several provisions contained in the Constitution of Missouri with regard to one holding two offices, and while those provisions are not directly in point with our present problem, nevertheless they seem to show that it was the intention of the framers of our Constitution to except notaries public as an office in placing a bar against certain persons holding two offices. For example, Article IX, Sec. 18, of the Constitution of Missouri, reads thus:

"In cities or counties having more than two hundred thousand inhabitants, no person shall, at the same time, be a state officer and an officer of any county, city or other municipality; and no person shall, at the same time, fill two municipal offices, either in the same or different municipalities; but this section shall not apply to notaries public, justices of the peace or officers of the militia."

Again, Article IV, Sec. 12, reads thus:

"No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any office under this State, or any municipality thereof; and no member of Congress or person holding any lucrative office under the United States, or this State, or any municipality thereof (militia officers, justices of the peace and notaries public excepted), shall be eligible to either house of the General Assembly, or remain a member thereof, after having accepted any such office or seat in either house of Congress."

We find no statutory provision in Missouri which would prevent holding both of these offices at the same time.

The question now presented is the question of the validity of the acknowledgment under the particular facts set forth in your request. We assume that the acknowledgment you refer to in your request is that required by Section 9957a, Laws of Missouri, 1933, page 438, which reads in part as follows:

"Such conveyance shall be executed by the county collector, under his hand and seal, witnessed by the county clerk and acknowledged before the county recorder or any other officer authorized to take acknowledgments and the same shall be recorded in the recorder's office before delivery; a fee for recording shall be paid by the purchaser and shall be included in the costs of sale. Such deed shall be prima facie evidence that the property conveyed was subject to taxation at the time assessed, that the taxes were delinquent and unpaid at the time of sale, of the regularity of the sale of the premises described in the deed, and of the regularity of

of all prior proceedings, that said land or lot had not been redeemed and that the period therefor had elapsed, and prima facie evidence of a good and valid title in fee simple in the grantee of said deed; and such deed shall be in the following form, as nearly as the nature of the case will admit, namely: * * * "

We think an analogous case to the instant case is *Cook v. Foster*, 96 Mich. 610, 616, 55 N. W. 1019, in which the court said:

"The deed was executed by the under-sheriff, and the acknowledgment was taken by one Myron G. Wood, a notary public. Mr. Wood was at that time sheriff of the county. The statute provides that such sale shall be made by the person appointed for that purpose in the mortgage, or by the sheriff, under-sheriff, or deputy-sheriff of the county, and the deed executed by the officer or person making the sale. How. Stat. sections 8501, 8505. Mr. Wood, in taking the acknowledgment, did not act as sheriff, but as a notary public. We think the acknowledgment valid. * * * "

In the case at bar, the person taking the acknowledgment is not acting as deputy collector, but as a notary public.

CONCLUSION

In view of the above provisions of our Constitution

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and statutes, and the authorities cited, it is the opinion of this Department that a person may perform the duty of notary public while holding the position of Deputy Collector. Furthermore, it is our opinion that an acknowledgment of a Collector to deeds for land sold at a tax sale taken by a Deputy Collector in his capacity as notary public, is valid.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

TYRE W. BURTON
(Acting) Attorney General

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