

1978 WL 35067 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 29, 1978

**\*1 RE: Opinion Request—Notaries Public**

The Honorable Chris Pracht  
House of Representatives  
District No. 6  
Box 574  
Anderson, SC 29622

Dear Mr. Pracht:

Mr. Evans has forwarded your request for an opinion regarding notaries public to me for reply.

The first question you ask is whether the notary commission of one whose voter registration certificate has been revoked as the result of a conviction for receiving stolen goods is still valid. South Carolina Code of Laws, 1976, § 26-1-10, provides in part that notaries public shall be drawn from the qualified electors. Disqualification to vote removes a condition of eligibility. The law generally is that eligibility to public office is of a continuing nature and must exist throughout the incumbency. 63 Am.Jur.2d, Public Officers and Employees, § 42. Therefore, removal of registration would constitute a removal of the right to act as notary.

You have also asked the status of acts done by the notary, such as marriages and notarization of documents, during his disqualification. It is the law generally that acts performed by one with colorable title to an office are as valid as acts by one with lawful title, since the public is not required to inquire into the authority of one apparently holding office. This doctrine applies equally to notaries as to other public officials and the acts of a notary de facto are as valid as those of a notary de jure. CJS, Notaries, § 5. To be a notary de facto the person must be acting in good faith and must have been continuing to exercise the functions of his Office, not performing solely one official act. Whether a notary suffering a disqualification is a notary de facto depends on the facts and circumstances of each case. Id., at 613.

Your final question is whether, upon service of the sentence the notary's commission is automatically revived until its expiration date. South Carolina Code of Laws, 1976, § 7-5-120(5)(b), provides in part that persons convicted of receiving stolen goods, among other crimes, 'shall be disqualified from being registered or voting, unless such disqualification shall have been removed by pardon.' Expiration of the sentence, therefore, does not remove the disqualification and, absent a pardon, a person so convicted is permanently disqualified from voting and, therefore, from holding a notary's commission.

I hope that this has answered your question satisfactorily. If this Office can be of any further assistance to you, please do not hesitate to contact me.

Very truly yours,

Katherine W. Hill  
Assistant Attorney General

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