

1975 WL 29517 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 20, 1975

*1 Mr. John F. Cormier
1070 Quail Drive
Charleston, South Carolina 29412

Dear Mr. Cormier:

Your letter concerning whether a Notary Public in South Carolina has the power to attest to the authenticity of an out-of-state birth certificate has been referred to me for reply.

With reference to the powers of a Notary Public, Sections 49-1 et seq. of the 1962 Code of Laws of South Carolina (as amended) sets forth both the requirements and general powers. Specifically, Section 49-8 provides:

‘A Notary Public may administer oaths, take depositions, affidavits, protests for nonpayment of bonds, notes, drafts and bills of exchange, acknowledgements and proof of deeds and other instruments required by law to be acknowledged and renunciations of dower and perform all other acts provided by law to be performed by notaries public.’

In addition, Section 49-7 provides that the jurisdiction of notaries public ‘shall extend throughout the State’ thus limiting their jurisdiction solely to South Carolina. See Also 1961 Attorney General's Opinion, #1255 at 350. Therefore, in absence of express statutory authority and due to the jurisdictional limitation, it is clear that a Notary Public in South Carolina does not have the power to attest to the authenticity of an out-of-state document. [Emphasis Added].

Furthermore, it is our position that a South Carolina Notary Public cannot attest to the authenticity of an out-of-state birth certificate. The Notary Public's powers are derived solely from statute in South Carolina and nowhere is such a power conferred or necessarily implied from the existing statutes. Also, there seems to be a question as to whether or not someone other than the custodians of documents of vital statistics, i.e. the Bureau of Vital Statistics or agency or department such as the Health Department of the jurisdiction in which they are held, can certify to the document's authenticity. In light of this, it seems that only the person in custody of such documents as birth certificates could attest to their authenticity and any other attempt by someone else would be invalid.

It is our information that what was conveyed to you from the Secretary of State's Office is that a South Carolina Notary Public could attest to the authenticity of a document going out of state. If this information is correct, it is entirely proper as this would be within the jurisdiction and powers as conferred by the statutes mentioned above. It should be noted that this is a distinctly different situation from a Notary Public attesting to the authenticity of a document coming into South Carolina from another state.

Therefore, in view of the aforementioned principals, a Notary Public does not have the power to attest to the authenticity of an out-of-state document. Even if the Notary Public had statutory authorization to accomplish the above, a Notary Public could not attest to the authenticity of a document of vital statistics as this is solely within the power of the custodian of such records.

*2 I trust this is sufficient in answering the questions posed in your correspondence. If this Office can be of any further assistance, please do not hesitate to contact us.

Sincerely yours,

H. Michael Bowers
Law Clerk

ATTACHMENT

A BILL

TO ALLOW PHYSICIANS TO REPORT TO THE STATE HIGHWAY DEPARTMENT ANY PATIENT WHO HE FINDS UNFIT TO OPERATE A MOTOR VEHICLE AND TO PROVIDE IMMUNITY FROM CIVIL LIABILITY FOR SUCH PRESICIANS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. A physician may report to the State Highway Department any patient who he examines and finds medically unfit to operate a motor vehicle. The physician's report shall not be grounds for civil liability to any person nor a basis for action against such physician.

SECTION 2. This act shall take effect upon approval by the Governor.

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