

1975 WL 29736 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 21, 1975

\*1 Mr. Robert E. Guess, Esquire  
Attorney at Law  
41 Broad Street  
2nd. Floor  
Charleston, SC

Dear Mr. Guess:

You have requested in regard to the following questions concerning notary publics:

I. The validity of a notary public commission issued to an applicant who was a lifelong resident of Union County and a registered voter there for several years, moved to Charleston County, applied for and was commissioned as notary public after residing in Charleston only thirty days and without registering to vote in that county, the application being endorsed by the Charleston legislative delegation.

II. The validity of the official acts of this individual.

S. C. Code Ann. § 49-1 (Cum. Supp. 1974) states in part:

The Governor may appoint from the qualified electors as many notaries public throughout the State as the public good shall require, to hold their offices for a term of ten years.

Numerous South Carolina decisions and opinions from this Office have held that a 'qualified elector' means a registered elector. See enclosed Office of the Attorney General opinion letters dated July 21, 1970, October 20, 1971, and October 25, 1974 and the cases cited therein. The notary public you describe was not registered to vote in Charleston County and therefore failed to become a registered elector under the provisions of South Carolina Constitution, Article 2, Section 3 and S. C. Code Ann. § 23-62(3) (Cum. Supp. 1974). This individual is therefore not a legally qualified notary public in South Carolina.

Even though this individual is not a legally qualified notary public, he is still a de facto state official having a colorable title to the office accompanied by possession. As a de facto state official this individual's acts are valid in all instances affecting the right of the public and third persons. See generally enclosed Office of the Attorney General opinion dated June 5, 1961.

Very truly yours,

John L. Choate  
Staff Attorney

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