

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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November 26, 2007

Opinion No. 07-157

Notaries Public — Whether notaries public are state or county officials.

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**QUESTIONS**

1. Is a notary public a state or county official?
2. To whom should allegations of misconduct in office by a Tennessee notary public be directed for investigation and resolution?

**OPINIONS**

1. A notary public is a state official whose duties are prescribed by statute.
2. Complaints of criminal misconduct by a notary public should be directed to the appropriate law enforcement agency in the municipality or county in which the alleged conduct took place.

**ANALYSIS**

1. Notaries public are elected by the members of the county legislative body and are commissioned by the Governor. Tenn. Code Ann. §§ 8-16-101 and 8-16-102. Courts have consistently held that each notary is an officer of the state of Tennessee. *Krueger v. Miller*, 489 F. Supp. 321 (E.D. Tenn. 1977), *aff'd* 617 F.2d 603 (6th Cir. 1980). *See also In re Marsh*, 12 S.W.3d 449 (Tenn. 2000).<sup>1</sup>

2. Pursuant to Tenn. Code Ann. § 8-7-103, the District Attorney General has the duty of prosecuting all violations of state criminal statutes which occur in his or her district. This duty includes prosecutions of criminal acts committed by notaries.<sup>2</sup> A citizen who wishes to file a

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<sup>1</sup>This conclusion is not inconsistent with Tenn. Op. Att’y Gen. 94-059 in which this office opined that notaries public were not required to be citizens of the United States. The issue whether a notary public is a county or State official was not addressed in that opinion.

<sup>2</sup>Examples of criminal acts which a notary may be charged with include: (1) acting in an official capacity after the expiration of his/her notary commission, (2) non-compliance with Tenn. Code Ann. §§ 8-16-401 and 8-16-402 constituting an unfair or deceptive act pursuant to Tenn. Code Ann. § 47-18-104, (3) Accepting the office of notary

criminal complaint against a notary public may do so by contacting the District Attorney General of the judicial district in which the alleged criminal conduct occurred and proceeding through the complaint process.<sup>3</sup>

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when ineligible pursuant to Tenn. Code Ann. § 8-18-102 and (4) acting as a notary after moving out of Tennessee. Tenn. Code Ann. § 8-16-110.

<sup>3</sup>In addition to criminal penalties, notaries who engage in misconduct may face civil liability and possible ouster. Tenn. Code Ann. § 66-22-113 states that a notary or other officer who takes an acknowledgment of an instrument and fails or refuses to comply with and discharge the duties of the notary office may be required to pay one hundred dollars (\$100) and can be held liable to the injured party for all damages and costs. The injured party may recover damages by bringing an action in either chancery or circuit court. Tenn. Code Ann. § 66-22-113.

A notary may be removed from office through the ouster process as outlined by Tenn. Code Ann. § 8-47-101, *et seq.* A person may send a written notice to the Attorney General and Reporter, the District Attorney General, county attorney and/or city attorney, within their respective jurisdictions, that a notary is guilty of any of the enumerated acts, omissions, or offenses set out in § 8-47-101. Upon receiving such notice the named attorney is under a statutory duty to investigate the complaint, and, if the attorney finds that there is reasonable cause for the complaint, to institute ouster proceedings in the appropriate court. Tenn. Code Ann. § 8-47-103. Additionally, an ouster petition may be filed in the name of the state upon the relation of ten (10) or more citizens upon providing surety for costs. Tenn. Code Ann. § 8-47-110.