

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

September 29, 2014

Opinion No. 14-89

Duty of Notary Public to Maintain Record

QUESTIONS

1. Is a notary public required to keep a record of each of the notary public's acts, attestations, protestations, and other instruments of publication regardless of whether the notary public charges a fee for his or her services?

2. If the answer to Question 1 is yes, is a notary public required to keep an actual bound book, or is it sufficient for the notary public to keep a record of his or her acts in another recorded format, *e.g.*, an electronic record?

OPINIONS

1. Yes. Beginning October 1, 2014, notaries public are required to maintain "a record in a well-bound book of each of the notaries public's acts, attestations, protections, and other instruments of publication" regardless of whether the notary public receives a fee or compensation for his or her services.

2. So long as the information kept in the notary public's record is available for public inspection and other conditions are met, such information may be maintained in any appropriate electronic medium.

ANALYSIS

1. 2014 Tenn. Pub. Acts, ch. 805 ("Chapter 805"), amends Tenn. Code Ann. § 8-21-1201 to provide as follows:

Notaries public are entitled to demand and receive reasonable fees and compensation for the notaries public's services. The notaries public shall keep a record in a well-bound book of each of the notaries public's acts, attestations, protestations, and other instruments of publications.

Chapter 805, § 5. This provision becomes effective October 1, 2014. *Id.* § 6.

Prior to this amendment, Tenn. Code Ann. § 8-21-1201 provided that notaries public were entitled to demand and receive a fee of \$ 1.00 "[f]or recording in a well-bound book, to be kept by the notary for that purpose, each attestation, protestation,

and other instrument of publication.”¹ Chapter 805 deleted this section in its entirety; it also deleted Tenn. Code Ann. § 8-16-118, which similarly allowed a notary public a fee of \$1.00 “for recording in a well-bound book . . . each of the notary’s attestations, protestations, and other instruments of publication.”

This language tied the notary’s receipt of a fee directly to the duty to record in a well-bound book. But under Public Chapter 805, the duty to “keep a record in a well-bound book of each of the notaries public’s acts, attestations, protestations, and other instruments of publications” is separate and distinct from the authority to receive reasonable fees and compensation for services provided. Based on the plain language of Chapter 805, beginning October 1, 2014, a notary public is required to keep a record of his or her acts in a well-bound book regardless of whether the notary public receives a fee or compensation for his or her services.

2. The Tennessee Supreme Court has held that when the act of keeping a book of record is performed by a notary public, “it shall have the effect of an act performed by a public officer, under his official oath.” *Wheeler v. State*, 56 Tenn. 393, 396 (1872); see *In re Marsh*, 12 S.W.3d 449, 453 (Tenn. 2000) (“A notary is a public official of the state of Tennessee . . .”); see also Tenn. Att’y Gen. Op. 07-157, at 1 (Nov. 26, 2007) (opining that “a notary public is a state official whose duties are prescribed by statute”).² The record kept of a notary public’s official acts is therefore a public record. See e.g., Tenn. Code Ann. § 10-7-503(a)(1)(A) (defining “public record”); see also 66 C.J.S. *Notaries* § 15 (“Under statutes which require notaries to keep records of all, or certain, of their official acts, the record is a public one . . .”).

Tenn. Code Ann. § 10-7-121 provides that “any information required to be kept as a record by any governmental official may be maintained on a computer or removable computer storage media, including in any appropriate electronic medium, *instead of books or paper records* if the following standards are met:”

¹ The statute also provided that notaries public were entitled to fees for the following acts:

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| (2) | For the protestation of negotiable instruments, for each instrument protected, without regard to the number of parties on each instrument. | \$1.50 |
| (3) | For every acknowledgment or probate of deed, or other instrument of writing, with seal attached, the same as county clerks. | |
| (4) | For acknowledgment of notes for advances on tobacco. | .25 |
| (5) | For each deposition taken. | 1.00 |
| (6) | For any other service legally performed by the notary, the same fees allowed other officers for like services. | |

² In Tenn. Att’y Gen. Op. 07-157 and in *Marsh*, it was noted that notaries public are commissioned by the governor. Chapter 805 also amended Tenn. Code Ann. § 8-16-102 to provide that notaries public are “approved,” not commissioned, by the governor and that “approved” means “to accept or to sanction, and does not mean to appoint.” Chapter 805, §§ 1, 4. This amendment, however, does not alter the conclusion that a notary public is a public official.

- (A) Such information is available for public inspection, unless it is a confidential record according to law;
- (B) Due care is taken to maintain any information that is a public record during the time required by law for retention;
- (C) All daily data generated and stored within the computer system shall be copied to computer storage media daily, and the newly created computer storage media more than one (1) week old shall be stored at a location other than at the building where the original is maintained; and
- (D) The official can provide a paper copy of the information when needed or when requested by a member of the public.

§ 10-7-121(a)(1) (emphasis added). So long as the information required to be kept by Tenn. Code Ann. § 8-21-1201 is available for public inspection, therefore, and the other statutory conditions are satisfied, a notary public may maintain that information in electronic form, rather than the “well-bound book” called for by the statute. *See also* Tenn. R. Evid. 1005 (providing for admission of a certified copy of the “contents of an official record, . . . including data compilations in any form”).

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