

Office of the Attorney General
State of North Dakota

Opinion No. 87-22

Date Issued: November 23, 1987

Issued to: Richard Wilkes
Burke County Assistant State's Attorney

--QUESTION PRESENTED--

Whether N.D.C.C. § 47-19-14.1(1) allows a notary public from another jurisdiction to perform notarial acts in North Dakota.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that N.D.C.C. § 47-19-14.1(1) allows, under certain circumstances, a notary public from another jurisdiction to perform notarial acts in North Dakota.

--ANALYSIS--

Prior to its amendment by the 1987 Legislature, the pertinent part of N.D.C.C. § 47-19-14.1(1) stated as follows:

Notarial acts may be performed outside this state for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of this state:

1. A notary public authorized to perform notarial acts in the place in which the act is performed.

Essentially, the statute stated that notarial acts may be performed outside this state for use in this state by a notary public authorized to perform notarial acts in the place in which the act is performed. Without doubt, the statute only referred to the actions of notaries outside North Dakota. It did not support the proposition that non-North Dakota notaries may perform notarial acts in North Dakota.

The statute, however, was amended in 1987. 1987 N.D.Sess.Laws ch. 556, § 1. The amendment was effective July 1, 1987. Since July 1, the essential part of N.D.C.C. § 47-19-14.1(1) states that "Notarial acts may be performed for use in this state ... by the following persons authorized pursuant to the laws and regulations of other governments ... 1. A notary public authorized by any jurisdiction to perform notarial acts."

The 1987 changes to the statute are significant. No longer is it limited to notarial acts "performed outside this state," as the phrase "outside this state" is deleted. Also, subsection one has been revised to broaden acceptance of notarial acts to include those performed beyond as well as within the boundaries of the state.

It is a rule of statutory construction that if words in a prior statute that express a certain meaning are omitted in a successor statute, presumably a change in meaning is intended. *Bostow v. Lundell Mfg. Co.*, 376 N.W.2d 20, 22 (N.D.1985); *Lingwall v. Hoener*, 483 N.E.2d 512, 515 (Ill.1985); *Craven v. Crout*, 209 Cal.Rptr. 649, 652 (Cal.Ct.App.1985). Therefore, the revisions of § 47-19-14.1(1) mean the legislature intended to allow non-North Dakota notaries to perform notarial acts in North Dakota.

Legislative history may also be used in determining legislative intent. N.D.C.C. § 1-02-39(3). To determine legislative intent, however, one may only cautiously rely upon comments of a legislator. *Snyder's Drug Stores, Inc. v. North Dakota State Bd. of Pharmacy*, 219 N.W.2d 140, 147 (N.D.1974). Even so, the legislative history of the bill proposing amendment of § 47-19-14.1(1), Senate Bill No. 2495, supports the conclusion that non-North Dakota notaries may notarize documents in the state. Senate John Olson, the sponsor of Bill No. 2495, in testimony before legislative committees said the bill's purpose is to recognize notarial acts by non-North Dakota notaries done within North Dakota. Hearings on S. 2495 before the Senate Committee on Judiciary, 50th Leg. (Feb. 9, 1987) ("the bill would allow a Montana notary to notarize a document inside the state of North Dakota"); Hearings on S. 2495 before the House Committee on Judiciary, 50th Leg. (Mar. 2, 1987) ("This bill allows that we recognize out-of-state notaries done in this State on local documents").

Therefore, N.D.C.C. § 47-19-14.1(1) provides for the recognition of notarial acts performed in North Dakota by a notary public commissioned in another jurisdiction. The statute, however, has had this effect only since July 1, 1987. There is no indication either in the statute or its legislative history that the legislature intended it to be retroactive. For a statute to be retroactive the legislature must clearly intend that it have such an effect. N.D.C.C. § 1-02-10; *State v. Cummings*, 386 N.W.2d 468, 471 (N.D.1986).

There is an important caveat to my opinion that N.D.C.C. § 47-19-14.1(1) allows a notary public commissioned in another jurisdiction to perform notarial acts in North Dakota. The statute says these notaries must be "authorized pursuant to the laws and regulations of other governments." This means the acts of a non-North Dakota notary performed in North Dakota will only be valid if

the notary's home jurisdiction gives the notary the authority to act outside the jurisdiction.

Assume a non-North Dakota notary has been commissioned in a state that prohibits its notaries from acting outside the state. Should such a notary act in North Dakota, the act would be invalid because the notary, having exceeded the authority and jurisdiction given by the commissioning state, ceases to be an official capable of notarial acts. The individual, not being "authorized pursuant to the laws and regulations" of the commissioning state, is no longer a notary public within N.D.C.C. § 47-19-14.1(1). The act would be just as invalid as is the act done by a notary whose commission has expired.

Thus, before one may with confidence say N.D.C.C. § 47-19-14.1 validates a particular notarial act performed in North Dakota by a non-North Dakota notary, a study must be made of the authority given by the notary's home state. More than a few states limit the jurisdiction of their notaries to county or state boundaries. See, e.g., Neb.Rev.Stat. § 64-107 (1986); N.Y.Exec.Law § 130 (McKinney 1987 Supp.); Pa.Stat.Ann. tit. 57, § 148 (Purdon 1964); United Services Automobile Ass'n v. Ratterree, 512 S.W.2d 30, 32 (Tex.Civ.App.1974); In re State ex rel Wootan, 313 So.2d 621, 624 (La.Ct.App.1975), writ denied, 318 So.2d 247 (La 1975), cert. denied, 424 U.S. 912 (1976).

In deciding whether an acknowledgment by a non-North Dakota notary is valid, consideration also should be given the rule that notaries public are presumed to act within their jurisdiction. N.D.C.C. § 1-04-04; Lee v. Crawford, 88 N.W. 97, 98 (N.D.1901); Milligan v. Zeller, 196 N.W. 793, 793-4 (Iowa 1924).

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question is decided by the courts.

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