

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 88-10

Date issued: March 8, 1988

Requested by: Peter H. Furuseth
Williams County State's Attorney

- QUESTION PRESENTED -

Whether a certificate of acknowledgment appearing on or attached to a document is valid where the certificate contains a non-embossed seal.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a certificate of acknowledgment appearing on or attached to a document is valid where the certificate contains a non-embossed seal because there is "substantial compliance" with statutes requiring notarization.

- ANALYSIS -

The 1987 Legislative Assembly enacted House Bill No. 1097 providing the form of seal to be used by courts and officers of the state. Specifically, House Bill No. 1097 requires seals used by such officials, including notaries public, to be embossed and surrounded by a border. 1987 N.D. Sess. Laws ch. 544. This change in the law providing for the form of a seal of a notary public was not widely known or announced prior to its effective date of July 1, 1987.

There is now much confusion and question as to the validity of a certificate of acknowledgment where an non-embossed seal appears therein. Information supplied to this office indicates that many notary publics have continued to use non-embossed seals as part of their certificates of acknowledgement since July 1, 1987. This opinion addresses the validity of certificates of acknowledgments containing non-embossed seals.

The general policy of the law is to construe certificates of acknowledgment liberally and to uphold them if they are in substantial compliance with the statutory requirements as to form and content, even though they fall short of literal conformity with those requirements, may contain clerical errors, or may be otherwise subject to technical objections. 1 Am. Jur. 2d Acknowledgments, ' 40 (1962); Annot., 25 A.L.R. 2d 1124, 1131 (1952).

The public policy favoring certificates of acknowledgment and their validity

despite technical problems is best stated by the Florida Supreme Court in the following excerpt from Edenfield v. Wingard, 89 So.2d 776, 778 (Fla. 1956):

In Summer v. Mitchell, 29 Fla. 179, 10 So. 562, 14 L. R. A. 815, we laid down the rule, from which there has been no departure, that the whole of the instrument acknowledged may be resorted to for support of the acknowledgment. This is a fundamental principle of construction. Moreover, in the foregoing case, we pointed out the policy of the law to uphold certificates of acknowledgment wherever possible. In the present age of modern recording statutes, abstracts of title and other means of investigation of record titles, this principle of law is of greater force than when it was first pronounced. But even when we declared:

"It is the established policy of the law to uphold certificates of acknowledgment * * * and, wherever substance is found, obvious clerical errors and all technical omissions will be disregarded. Inartificialness in their execution will not be permitted to defeat them, if looking at them as a whole, either alone or in connection with the [instrument], we find that they reasonably and fairly indicate a compliance with the law. Clerical errors will not be permitted to defeat acknowledgments when they, considered either alone or in connection with the instrument acknowledged, and viewed in light of the statute controlling them, fairly show a substantial compliance with the statute." (Emphasis ours.)

The foregoing citation from Summer v. Mitchell, supra, is taken from House of Lyons v. Marcus, Fla. 1954, 72 So.2d 34, where we upheld a questioned acknowledgment by officers of a corporation.

The general rule holding that certificates of acknowledgment in substantial compliance with statutory requirements are valid where defects nonetheless occur has been adopted in North Dakota. In Tenney Co. v. Thomas, 237 N. W. 710 (N. D. 1931), the North Dakota Supreme Court was faced with a certificate of acknowledgment concerning a mortgage of personal property which contained a falsified date upon the certificate. The argument was made that the certificate of acknowledgment was fatal due to the improper date contained therein. In response to this argument, the court stated:

We think, however, that the date [which was falsified] is not an essential matter. The identity of the mortgagor and the fact of his acknowledgment are the material facts. These the certificate must show, otherwise it is bad. If it shows these facts it is good. . . . Before a certificate of acknowledgement will be held fatally deficient, there must be an absence of some essential fact

of a substantial character. . . . We therefore hold that, though the date of the certificate of acknowledgement was intentionally false, the mortgage was, nevertheless, properly filed.

Id. at 712. This rule was repeated by the court in Hernett v. Meier, 173 N. W. 2d 907, 914 (N. D. 1970) (predating of certificate) and Brunswick Corp. v. Haerter, 182 N. W. 2d 852, 856 (N. D. 1971) (incorrect name of affiant).

Thomas and Hernett dealt with intentionally falsified dates upon the certificates of acknowledgment. The supreme court refused to label the certificates defective as a result of the falsified dates. The unknowing use of an improper seal in a certificate of acknowledgment which was permitted by North Dakota law and has only recently been changed with little notice to the general public is not nearly as serious a defect as the intentional falsification of a date within a certificate of acknowledgment. Where a certificate of acknowledgment containing an intentionally falsified date has been declared valid by the North Dakota Supreme court, I am of the opinion that a certificate of acknowledgment containing a seal now declared to be improper would also be declared valid where there is substantial compliance with the requirements of a certificate of acknowledgment.

Therefore, it is my opinion that a certificate of acknowledgment appearing on or attached to a document is valid where the certificate contains a non-embossed seal.

The requirement of an embossed seal by notaries public may continue to pose questions and problems in its implementation. The 1989 Legislative Assembly would be well encouraged to review this matter and to take whatever action may be appropriate to reduce the confusion in this area.

- 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 presented is decided by the courts.

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Attorney General

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