

79

THE

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated
All General Laws of the State in Force December 31, 1894

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THE ORGANIC ACT, ACT AUTHORIZING A STATE GOVERNMENT, THE STATE
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MINNESOTA STATUTES 1894

Ch. 26]

NOTARIES PUBLIC.

§§ 2268-2272

CHAPTER 26.

NOTARIES PUBLIC.

§ 2268. Appointment—Fee for commission.

The governor is authorized to appoint and commission as notaries public, by and with the advice and consent of the senate, as many persons, having the qualifications of electors, or any other citizen of this state over twenty-one years of age that the governor may deem suitable, and resident in the several counties of this state, as he deems necessary: *providing*, that no greater fee than three dollars shall be charged or received for each commission, and that such fees shall be paid to the governor's private secretary.

(G. S. 1866, c. 26, § 1; G. S. 1878, c. 26, § 1; as amended 1887, cc. 30, 85.)

§ 2269. Term—Bond—Oath.

2269

55-M . 187

Each notary public so appointed and commissioned shall hold his office for the term of seven years, unless sooner removed by the governor or the district court; and before entering upon the duties of his office, he shall give a bond to the state of Minnesota in the sum of two thousand dollars, with sureties to be approved by the governor, conditioned for the faithful discharge of the duties of his office, and he shall take and subscribe the oath required by law, and the same, with his bond, shall be deposited in the office of the secretary of state.

(G. S. 1866, c. 26, § 2; G. S. 1878, c. 26, § 2; as amended 1885, c. 48.)

§ 2270. Seal—Register.

2270
83-NW 835

Each notary public, before entering upon the duties of his office, shall provide himself with the proper official seal, with which he shall authenticate his official acts, upon which shall be engraved the arms of this state, the words "notarial seal," and the name of the county in which he resides, which seal, together with his official register, shall be exempt from execution; and on the death or removal from office of such notary public, his register shall be deposited in the office of the clerk of the district court of the county in which such notary resides.

(G. S. 1866, c. 26, § 3; G. S. 1878, c. 26, § 3.)

The statute being imperative, the seal is essential to the authenticity and legal effect of the acts of the notary. Each act by him must be so authenticated. *De Graw v. King*, 28 Minn. 118, 119, 9 N. W. Rep. 636.

Distinguished in *Osgood v. Sutherland*, 36 Minn. 245, 31 N. W. Rep. 211;

Rachac v. Spencer, 49 Minn. 235, 51 N. W. Rep. 920.

See *Thompson v. Scheid*, 39 Minn. 102, 38 N. W. Rep. 801.

§ 2271. Powers of notaries.

2271
95 . 335
95 . 346
2271 '05 . 48

Each notary public so appointed, commissioned and qualified, shall have power throughout this state, while residing within the county for which he was appointed, to administer all oaths required or authorized by law to be administered in this state, to take and certify depositions to be used in any of the courts of this state, to take and certify to all acknowledgments of deeds, mortgages, liens, powers of attorney, and other instruments in writing, and to receive, make out and record notarial protests.

(G. S. 1866, c. 26, § 4; G. S. 1878, c. 26, § 4.)

The attorney of record, if a notary public, may take the affidavit of service of the summons. *Young v. Young*, 18 Minn. 90, (Gil. 72.)

§ 2272. Record of commission—Certificate to official acts.

2272
97 - 19

Any notary public appointed under the provisions of this act shall have his commission recorded by the clerk of the district court of the county in which

he resides, and for which he was appointed, or of the county to which such county is attached for judicial purposes, in a book provided by the several clerks for that purpose, on payment to the clerk of one dollar for recording the same; and the clerk shall, upon having recorded such commission, and when thereunto requested, certify to the official acts of such notary public, whose commission is so recorded, in the same manner, and for the same fees allowed by law for similar certificates to authenticate acts of justices of the peace.

(G. S. 1866, c. 26, § 5; G. S. 1878, c. 26, § 5.)

§ 2273. Penalty for misconduct.

Any notary public exercising the duties of his office after the expiration of his commission or term of office, or when otherwise disqualified, or appending his official signature to acknowledgments or other documents when the parties executing the same have not appeared before him, is guilty of a misdemeanor, and shall be fined not to exceed one hundred dollars for each offence, to be recovered before any justice of the peace of the county, upon complaint, under oath, of any person; and, upon conviction thereof, his term of office shall cease.

(G. S. 1866, c. 26, § 6; G. S. 1878, c. 26, § 6.)

§ 2274. Protests—Notice—Record.

Every notary public, when any bill of exchange or promissory note is by him protested for non-acceptance or non-payment, shall give notice thereof in writing to each party protested against, immediately after such protest is made; and such notice may in all cases be given by depositing the same in the post-office, postage paid, and directed to the party protested against, at his reputed place of residence; and the notary shall, in such instrument of protest, certify to the time and manner of service of such notice upon the several parties protested against, and shall make a record of such instrument of protest in his official register, which record, or a duly certified copy thereof, shall be prima facie evidence of the facts therein contained.

(G. S. 1866, c. 26, § 8, as amended 1868, c. 44, § 1; G. S. 1878, c. 26, § 7.)

§ 2275. Instrument of protest as evidence.

The instrument of protest of any notary public appointed and qualified under the laws of this state, or the laws of any other state or territory of the United States, accompanying any bill of exchange or promissory note which has been protested by such notary for non-acceptance or for non-payment, shall be received in all the courts of the state as prima facie evidence of the facts therein certified; but any party may contradict, by other evidence, any such certificate.

(G. S. 1866, c. 26, § 9; G. S. 1878, c. 26, § 8.)

As instruments of evidence, such protests may properly be held to include the certificate of notice to indorsers usually accompanying them, though it is not expressly so stated in the section. *Bettis v. Schreiber*, 31 Minn. 329, 332, 17 N. W. Rep. 863.

This section does not make the protesting of promissory notes and inland bills of exchange necessary to charge the indorser, but simply makes the notary's certificate prima facie evidence of the facts certified therein. *Bryant v. Lord*, 19 Minn. 396, (Gil. 342.) See, also, *Kern v. Von Phul*, 7 Minn. 426, (Gil. 341.)

If a notary's record do not show prepayment of postage on the notice of demand and protest, the fact may be proved *abundante*. *Rogers v. Stevenson*, 16 Minn. 68, (Gil. 56.)

§ 2276. Powers in taking depositions.

In taking depositions, he shall have the same power to compel the attendance of witnesses, and punish witnesses for refusing to testify, which may be vested by law in justices of the peace; and all sheriffs and constables, and sheriffs in this state, are hereby required to serve and return all process issued by such notaries in taking depositions.

(G. S. 1866, c. 26, § 10; G. S. 1878, c. 26, § 9.)

§ 2277. Removal from office.

Any notary public who charges or receives any fee or reward for any act or service done or rendered by him under this chapter, greater than the

MINNESOTA STATUTES 1894

Ch. 26]

NOTARIES PUBLIC.

§ 2277

amount limited by law, or who dishonestly or unfaithfully discharges his duties as notary public, shall, on complaint filed and substantiated in like manner as other cases in the district court of the county in which he resides, be removed from his said office by such court; and the court shall thereupon certify the fact of such removal to the governor, and the party so removed shall be thereafter ineligible to a re-appointment to the office of notary public in this state.

(G. S. 1866, c. 26, § 11, as amended 1867, c. 97, § 2; G. S. 1878, c. 26, § 10.)

(613)