

The State of South Carolina

#1572
Lebrary



Office of the Attorney General

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May 7, 1985

The Honorable Frederick W. Robinson
Judge of Probate, Calhoun County
302 West Railroad Avenue
St. Matthews, South Carolina 29135

Dear Judge Robinson:

Your letter to Attorney General Medlock dated April 16, 1985, has been referred to the Opinion Section for response. You have advised that the former Judge of Probate performed a marriage after having lost her status as an elector but while apparently still holding her commission as a notary public. You have asked whether the marriage would be valid.

This Office addressed the same question in an opinion dated August 29, 1978, a copy of which is enclosed for your use. In particular, the second paragraph appears to answer your question.

Also enclosed please find pertinent portions of general law as to notaries public serving as de facto officers. 66 C.J.S. Notaries §5; 58 Am.Jur.2d Notaries Public §12. One point mentioned in these provisions and in the opinion also enclosed is that the duties of a de facto notary must be exercised on a continuing basis, frequency of repetition of a notary's acts being important, as well as action in good faith by the notary. Haynes v. State, 213 Tenn. 447, 374 S.W.2d 394 (1964); Williams v. State, 23 Ala.App. 365, 125 So. 690 (1930). This Office has no way to determine whether the performance of a marriage was the sole act as a notary by the individual in question, or whether she continued to otherwise exercise the powers of a notary after her loss of status as an elector. If the validity of the marriage were

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challenged in court on this basis, the frequency of her performance of acts as a notary after her disqualification from office could well determine her de facto status and hence the validity of the marriage.

We trust that this prior opinion will satisfactorily respond to your inquiry. If we may provide additional assistance or clarification, please advise us.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
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