

No. 193

NOTARIES PUBLIC

Held: A Notary Public, taking the acknowledgment of papers not presented to him by the maker and signer of such papers, is liable on his official bond for any damage occasioned thereby—and is also subject to having his commission revoked if the matter is called to the attention of the Governor.

July 31, 1941.

Mr. Bert I. Packer
County Attorney
Teton County
Choteau, Montana

Dear Mr. Packer:

You have written this office as follows:

"I have a complaint in this office concerning a Notary Public who has been accused of taking acknowledgments on papers, particularly chattel mortgages, when the papers have been presented to him by the mortgagee and the makers are not present. This applies only to chattel mortgages.

"In checking the statutes, I find no regulations as to the method to be pursued by the Notary Public. I can see no damage to the mortgagor in as much as if there was any fraud, the injured party would have to be the mortgagee. One of these mortgagors insists that I move to take the commission away from this Notary Public. I find no procedure whereby I could do anything in the absence of a showing of fraud and would like to have your advice on this matter."

Section 6910, Revised Codes of Montana, 1935, as amended by Chapter 171, Laws of 1937, provides in part as follows:

"The acknowledgment of an instrument must not be taken unless the officer taking it knows or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument; . . ."

Section 395, Revised Codes of Montana, 1935, provides in effect that, for the official misconduct or neglect of a Notary Public, he and the sureties on his official bond are liable to the parties injured thereby for all damages sustained.

Section 398, Revised Codes of Montana, 1935, provides upon ten days notice the Governor may revoke the commission of any Notary Public for any cause he may deem sufficient.

It is therefore my opinion anyone who has been damaged by the acts of the Notary Public in question may sue such Notary Public on his official bond, or if no damage has been sustained, the aggrieved party or someone acting in his behalf may lay the facts before the Governor and request the Governor to revoke the commission.

Sincerely yours,

JOHN W. BONNER
Attorney General