

The State of Texas



Executive Division
Capitol Building, 1E.8
P.O. Box 12697
Austin, Texas 78711-2697

Phone: 512-463-5770
Fax: 512-475-2761
Dial 7-1-1 For Relay Services
www.sos.state.tx.us

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Hope Andrade
Secretary of State

May 3, 2011 **OPINION COMMITTEE**

FILE # ML-46740-11
I.D. # 46740

RQ-0968-GA

The Honorable Greg Abbott
Attorney General of Texas
Post Office Box 12548
Austin, Texas 78711-2548

Interagency Mail

Re: Application of Chapter 603 to Texas notaries public

Dear General Abbott:

Chapter 406 of the Government Code ("Chapter 406") charges the Office of the Secretary of State (the "Office") with commissioning, educating, investigating, and disciplining Texas notaries public ("notaries"). Chapter 603 of the Government Code ("Chapter 603") contains provisions that are "generally applicable to public officers and employees." Secretary of State Andrade seeks your assistance in resolving the questions of whether and under what circumstances Chapter 603 applies to notaries.

Background

Chapter 406 imposes specific duties on notaries with respect to fees. Section 406.024 authorizes a notary to charge fees for specified services and sets a maximum fee for each service. Chapter 406 also imposes specific record-keeping duties on notaries. Section 406.014 requires notaries to record certain information about every notarial act performed. Nothing in Chapter 406 requires notaries to record fees, and nothing in Chapter 406 requires notaries to provide written bills in order to collect fees.

Chapter 603 addresses duties of "officers." Section 603.006¹ requires officers who are authorized to collect fees to keep a written fee book. Section 603.007² states, in part, that "[a] fee under [Chapter 603] is not payable to a person until a clerk or officer produces, or is ready to produce,

¹ Sec. 603.006. FEE BOOK. An officer who by law may charge a fee for a service shall keep a fee book and shall enter in the book all fees charged for services rendered.

² Sec. 603.007. BILL FOR FEES. A fee under this chapter is not payable to a person until a clerk or officer produces, or is ready to produce, a bill in writing containing the details of the fee to the person who owes the fee. The bill must be signed by the clerk or officer to whom the fee is due or who charges the fee or by the successor in office or legal representative of the clerk or officer. *Emphasis added.*

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Section 406.008 states, in part, that upon issuing a notary public commission, “the secretary of state shall supply the notary public with: (1) materials outlining the powers and duties of the office.” Currently, these materials state that Government Code § 603.006 requires notaries to record any fees collected in a fee book, and that § 603.007 requires notaries to produce, upon request, a written, signed, and itemized bill for any fees collected.

Issues

(1) Are notaries “officers” as that term is used in Chapter 603?

Chapter 603 lists certain officers by name, including the secretary of state, the Commissioner of the General Land Office, the comptroller, the commissioner of agriculture, the Banking Commissioner, the state librarian, and the attorney general³. Chapter 603 makes reference to notaries by name in two separate provisions. Section 603.005⁴ draws a clear distinction between a notary and an officer covered by the section, which seems to assume that a notary is not an officer for all purposes under chapter 603. The only other provision specifically referencing a notary in this chapter is § 603.008.⁵

Note that under Section 26, Article IV of the Texas Constitution and § 406.005 of the Government Code, a notary public is considered an officer of the state. Accordingly, reasonable minds may differ on whether Chapter 603 anticipates that notaries are “officers” of the same general class of officers named in various sections of Chapter 603.

(2) Note that if notaries are “officers” as that term is used in Chapter 603, a question arises as to the interplay between Chapter 603 and Chapter 406. On the one hand, §§ 603.006 and 603.007 impose specific requirements for officers to maintain fee books and producing bills. On the other hand, Chapter 406 does not impose any such requirements. If the statutes are in conflict, is the conflict irreconcilable so that Chapter 406, which is specific to notaries, should control over §§ 603.006 and 603.007?

(3) If notaries are “officers” as that term is used in Chapter 603, are fees that notaries collect “fees under Chapter 603,” so that § 603.007 would require notaries to produce, or be ready to produce, a signed, written, itemized bill in order to collect fees?

³ Sec. 603.002. COPIES OF DOCUMENTS AVAILABLE TO PUBLIC. The secretary of state, Commissioner of the General Land Office, comptroller, commissioner of agriculture, Banking Commissioner, state librarian, or attorney general:

- (1) shall furnish to a person on request a certified copy, under seal, of any document in the officer's office that is available under law to that person; and
- (2) may not demand or collect a fee from an officer of the state for a copy of any document in the respective offices or for a certificate in relation to a matter in the respective offices if the copy is required in the performance of an official duty of the office of the state officer requesting the copy.

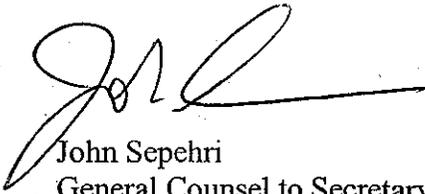
⁴ Sec. 603.005. FEE FOR ACKNOWLEDGEMENT. An *officer* who is authorized by law to take acknowledgement or proof of a deed or other written instrument shall receive the same fee a *notary public* may receive for the same service. *Emphasis added.*

⁵ Sec. 603.008. POSTING OF FEES REQUIRED. A county judge, clerk of a district or county court, sheriff, justice of the peace, constable, or *notary public* shall keep posted at all times in a conspicuous place in the respective offices a complete list of fees the person may charge by law. *Emphasis added.*

(4) If notaries are "officers" as that term is used in Chapter 603, then are notaries "officers named in Chapter 603" whose fees are authorized under Chapter 603, so that an aggrieved person could collect four times the amount of any unlawfully demanded fee under § 603.010?⁶

We appreciate your assistance. If you have any questions, please contact Lorna Wassdorf, Director, Business & Public Filings.

Best regards,

A handwritten signature in black ink, appearing to read 'John Sepehri', with a long horizontal flourish extending to the right.

John Sepehri
General Counsel to Secretary of State Hope And

⁶ Sec. 603.010. OVERCHARGING OF FEES; PENALTY. An officer named in this chapter who demands and receives a higher fee than authorized under this chapter or a fee that is not authorized under this chapter is liable to the aggrieved person for four times the amount unlawfully demanded and received.