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DEPARTMENT OF JUSTICE
CIVIL DIVISION
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August 10, 2023
OPINION 23-0064

The Honorable Debbie Villio
District 79
Louisiana House of Representatives
4203 Williams Blvd, Suite 200
Kenner, LA 70065

73 NOTARIES- Appointments & Qualifications

La. R.S. 35:191.

Once a notary has moved their residence to another state they have abandoned their commission and the commission is invalid

Dear Representative Villio:

You have requested an opinion regarding whether a notary public with statewide jurisdiction who has passed the Louisiana State Notary Exam and performed notarial functions for over a decade may continue to perform notarial functions within Jefferson Parish in her employment in the state as a paralegal after having moved her residence to Mississippi.

In order to possess a valid notarial commission, a notary must maintain the qualifications set forth in La. R.S. 35:191(A)(1),¹ the first of which is that a notary public be a resident citizen or alien of Louisiana.² Further, a "resident citizen seeking to be appointed notary public in the parish of his residence or possessing a valid notarial commission in and for a parish based on his residence must be a registered voter of that parish."³ A notary abandons his or her commission by moving to another state, rendering his or her commission invalid. Nor can a notary remain a registered voter in Louisiana after changing his or her residence to another state. A notary must notify the office of the Secretary of State within sixty days after the date of any change in residential address, mailing address, or both.⁴

In your request, you questioned whether the paralegal referenced in the request could avail herself of the provisions of La. R.S. 35:412 to continue to serve as a notary after moving to another state. However, that provision pertains to a person licensed to practice law in this state who is not a resident of this state but who maintains an office for the practice of law in this state. Nothing in the request indicates that the paralegal is licensed to practice law in this state, and, thus, La. R.S. 35:412 is inapplicable.

In your request, you refer us to several cases. In *Bernal v. Fainter*, 467 U.S. 216, the United States Supreme Court struck down a citizenship requirement for notaries in Texas' notary law as impermissible under the equal protection provision of the

¹ La. R.S. 35:191(A)(3).
² La. R.S. 35:191(A)(1)(a).
³ La. R.S. 35:191(B).
⁴ La. R.S. 35:191.3(A).

Fourteenth Amendment. In doing so, the Supreme Court in *Bernal* found that the duties of notaries in Texas were “essentially clerical and ministerial.” Based on that finding the Supreme Court held that the “public function” exception was inapplicable, thereby subjecting the Texas notary requirement to strict scrutiny in an equal protection analysis, which it did not pass. First, the *Bernal* case does not apply because it addresses a citizenship requirement (the plaintiff was a resident alien of Texas), whereas your request concerns a nonresident (in Louisiana a notary public must be a resident citizen or alien). Moreover, our office addressed the concerns you raised in your request regarding *Bernal* in La. Attorney General Opinion No. 92-818:

The requirement of residency in the State is not controlled by *Bernal v. Fainter*, 467 U.S. 216 (1984) which struck down a Texas statute that prohibited resident aliens from being appointed a notary as a denial of equal protection. The Court noted in *Bernal* that becoming a notary public in Texas, merely required one to fill out an application that lists one's name and address and answer four questions pertaining to one's age, citizenship, residency, and criminal record. We believe the requirement of residency by this State is rationally related to a legitimate state interest in light of the powers and functions of a notary in Louisiana which go beyond merely clerical and ministerial duties of the Texas notary as found by the Court in *Bernal*.

We must conclude under this state's law for appointment of a notarial commission an individual must have a residence in the state, and by court definition this does not include a business location.

La. Atty. Gen. Op. No. 92-818. As we stated in Op. No. 92-818, the Louisiana notary provisions were distinguishable from those under consideration in *Bernal*; a notary's powers in Louisiana are more than mere clerical and ministerial duties, and the residency requirement was rationally related to a state interest.

You also refer to *Cook v. Miller* 914 F. Supp. 177 (W.D. Mich. 1996), and indicate in your opinion request that the court in *Cook* “held that Michigan’s residency requirement for appointment as a notary public also violated Privileges and Immunities Clause.”⁵ We read *Cook* differently. In *Cook*, the District Court considered a constitutional challenge to Michigan’s requirement that a nonresident attorney licensed to practice law in the state be a citizen of Michigan and a resident of a county therein in order to receive an appointment as a notary public. First, the court found that the Michigan law passed a rational basis test for equal protection under the Fourteenth Amendment. The court also concluded that the requirement did not violate the Commerce Clause of Art. I, §8 of the U.S. Constitution because the Plaintiff did not show that the law unduly burdened interstate commerce or a protectionist motive in enacting the statute. With respect to the privileges and immunities claim, the court held that the plaintiff similarly did not “b[ring] forth enough evidence to prevail on a facial challenge.” *Id.* at 182. The district court found that the residency requirement was constitutional on its face. In dicta, the

⁵ May 24, 2023 Request for an Opinion.

court observed that on a different showing, the requirement could be unconstitutional as applied. However, the parties did not brief that issue, and the court declined to rule on an issue that was not briefed by the parties. *Id.* The district court ordered further briefing on the question of whether the law was unconstitutional as applied to the plaintiff, and absent briefing from the defendant, the court would be inclined to issue an injunction against enforcement of the requirement. *Id.* Nothing further is reported about the case.

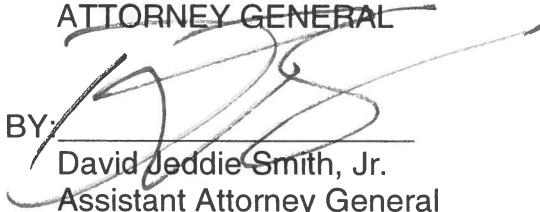
In Louisiana, it is well-settled that laws are presumed constitutional.⁶ *Cook v. Miller* does not provide authority for a determination that Louisiana's residency requirement for notaries is facially unconstitutional nor that it would be unconstitutional as applied in the circumstance presented in your request. Any such determination would need to be made by a court of competent jurisdiction. This office is not a trier of fact and does not make such determinations.

Finally, we note that once a notary surrenders his or her notarial commission, voluntarily or by no longer possessing the qualifications of the office, he or she must apply for a new commission and meet all requisites of LA R.S. 35:191 and 35:201 in order to obtain a valid commission.⁷

If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JEFF LANDRY
ATTORNEY GENERAL

BY: 
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⁶ See *Carver v. Louisiana Dep't of Pub. Safety*, 2017-1340 (La. 1/30/18), 239 So. 3d 226, 230:

All statutory enactments are presumed constitutional, and every presumption of law and fact must be indulged in favor of legality. *Moore v. RLCC Technologies, Inc.*, 95-2621 (La. 2/28/96), 668 So.2d 1135. In the case of *City of Shreveport v. Pedro*, 170 La. 351, 127 So. 865 (La. 1930), this Court explained the basic requirements of a constitutional challenge: "It is elementary that all laws are presumed to be constitutional until the contrary is made clearly to appear, and that he who urges the unconstitutionality of a law must specially plead its unconstitutionality, and show specifically wherein it is unconstitutional." *Pedro*, 170 La. 351, 127 So. 865. Similarly, in *Johnson v. Welsh*, 334 So.2d 395, 396 (La. 1976), the court stated: "It is well settled that all laws are presumed to be constitutional until the contrary is made to appear, and that as a general rule a litigant cannot raise the unconstitutionality of a statute unless its unconstitutionality is specially pleaded and the grounds particularized." The presumption is especially forceful in the case of statutes enacted to promote a public purpose. *Polk v. Edwards*, 626 So.2d 1128, 1132 (La. 1993).

⁷ La. Atty. Gen. Op. No. 00-265.