Oath of notary public

Number: AGO 74-66

Date: November 06, 1998

Subject:
Oath of notary public

RE: NOTARIES PUBLIC--MAY NOT ADMINISTER OATH TO SELF AS WITNESS TO A WILL

To: William M. Gillespie, Senator, 10th District, New Smyrna Beach

Prepared by: Michael Parrish, Assistant Attorney General

QUESTION:

May a notary public before whom a will is acknowledged also be a witness to the will and administer an oath to himself, under Ch. 73-8, Laws of Florida (s. 731.071, F.S.)?

SUMMARY:

A notary public before whom a will is acknowledged and sworn to, or self-proved, pursuant to Ch. 73-8, Laws of Florida, cannot also serve as a witness to the will, because he is without authority to administer an oath to himself.

Chapter 73-8, Laws of Florida, creates s. 731.071, F. S., which provides that a will may be made "self-proved" by the acknowledgment of the testator and the affidavits of the witnesses "each made before an officer authorized to administer oaths," and evidenced by such officer's certificate annexed to the will. The statute sets out the form of such certificate of the officer before whom the testator and the witnesses appeared to self-prove the will. This certificate provides, in the usual form, that the acknowledgment and affidavits were

"Subscribed and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, the witnesses, on _____, 19_____."

The general rule, as stated in 67 C.J.S. *Oaths and Affirmations* s. 5, is that "ordinarily an officer cannot administer an oath to himself, in the absence of express statutory authority." *Accord*: *In re* Application of Gould, 196 A.2d 278 (N.J. Super. 1963); Asher v. Sizemore, 261 S.W.2d 665 (Ky. App. 1953); Phillips v. State, 63 S.E. 667 (Ga. App. 1909). Also see Hogans v. Carruth, 18 Fla. 587 (Fla. 1882), holding that an acknowledgment of a deed by the grantee was void.

The statutory provisions which authorize a notary public to administer oaths and take acknowledgments appear at ss. 117.03 and 117.04, F. S. An examination of those sections reveals that a Florida notary public has no express statutory authority to administer an oath to himself or to take his own acknowledgment, and Ch. 73-8, *supra*, does not authorize him so to do. Accordingly, I am of the view that a notary public before whom a will is made self-proved

under Ch. 73-8, may not also serve as a witness to such will, because he is without authority to administer an oath to himself.