

of Pennsylvania, Series LT, dated October 28, 1953, maturing May 28, 1954, constitute legal obligations payable by the Commonwealth of Pennsylvania, from current revenues accruing to the General Fund of the State Treasury of the Commonwealth of Pennsylvania during the two fiscal years ending May 31, 1955, and are secured by the current revenues levied and assessed for revenue purposes of every kind and character accruing to the said General Fund during said biennial period.

The appropriation acts are appropriations made for the current biennium by the General Assembly for the general purposes of the fiscal biennium and are appropriations of amounts that exceed the amount of the notes by more than three times. No other tax anticipation notes have been issued in this biennium.

We are further of the opinion that the allocation of the moneys in the General Fund, which are specifically set forth on the face of the notes, made by the Department of Revenue, and approved by the Governor, the Auditor General and the State Treasurer, to provide a sinking fund for the payment of said notes, are payable into and shall be set aside in the sinking fund accounts, mentioned on the face of the notes in the amounts and at times specified, prior to all other expenditures, expenses, debts and appropriations, including current expenses, payable from the General Fund.

Very truly yours,

DEPARTMENT OF JUSTICE,

FRANK F. TRUSCOTT,  
*Attorney General.*

HARRINGTON ADAMS,  
*Deputy Attorney General.*

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OPINION No. 644

*Notaries—Retrouctivity of Notary Public Act of August 21, 1953—Notary Public Act of May 18, 1949—Seals—Fees.*

1. Notaries appointed under the Act of May 18, 1949, P. L. 1440, may continue to use notarial seals engraved in accordance with section 16 of said act for the duration of their present terms of office; notaries appointed under the Act of August 21, 1953 (No. 373) are to use notarial seals engraved in accordance with section 12 of said act.

2. The legislature, having intended the Act of August 21, 1953, (No. 373), to have a prospective application, did not intend it to be applicable to notaries

appointed under the Act of May 18, 1949, P. L. 1440; such notaries must adhere to the provisions of the 1949 Act, under which they were appointed, for the duration of their present terms of office.

3. Since the legislature intended the Act of August 21, 1953 (No. 373), to be construed prospectively, section 21 of the act, relating to fees, is not applicable to notaries appointed under the Act of May 18, 1949, P. L. 1440.

Harrisburg, Pa., November 16, 1953.

Honorable Gene D. Smith, Secretary of the Commonwealth, Harrisburg, Pennsylvania.

Sir: We have your communication of August 25, 1953, wherein you request to be formally advised on the following questions relating to "The Notary Public Law", the Act of August 21, 1953, Act No. 373:

1. Does Section 12 of the Act of August 21, 1953, Act No. 373, preclude presently commissioned notaries from using notarial seals that are engraved in accordance with Section 16 of the Act of May 18, 1949, P. L. 1440?

2. Do the provisions of Sections 7 and 10 of the Act of August 21, 1953, Act No. 373, relating to the moving of office and changing of name, apply to notaries now in commission or are they subject to the corresponding provisions of the Act of May 18, 1949, P. L. 1440, until the expiration of their present terms?

3. Is Section 21 of the Act of August 21, 1953, Act No. 373, relating to fees, applicable to presently commissioned notaries or does Section 13 of Article III of the Constitution of Pennsylvania prohibit such application until a reappointment is made?

The legislature, by enacting "The Notary Public Law", the Act of August 21, 1953, Act No. 373, substantially changed the prior law pertaining to notaries public. Therefore, since your questions relate to a number of such changes, it would be well to have in mind the particular differences that are involved.

Section 12 of the Act of 1953, *supra*, eliminates the necessity of engraving the location of the office of the notary on the notarial seal but adds the words "Commonwealth of Pennsylvania". All other directions as to the engraving to be placed on the seal are identical. Accordingly, notarial seals engraved in accordance with the directions provided by Section 16 of the Act of May 18, 1949, P. L. 1440 (prior law), only differ in the above respect with seals engraved in accordance with Section 12 of the Act of 1953, *supra*.

Section 7 of the Act of 1953, *supra*, provides that a notary may change his office address to any location within the Commonwealth, if the required notice as provided therein is given, while Section 14 of the Act of 1949, *supra*, requires a notary to maintain an office in the city, borough, town or township of the county named in his commission.

As to the procedure to be followed if the name of a notary is changed, Section 10 of the Act of 1953, *supra*, permits a notary to continue to act under the name stated in his commission until the expiration of his or her term, again, provided the required notice set forth therein is given. Section 12 of the Act of 1949, *supra*, however, requires a new commission to be issued for the remainder of the original term when the name of the female notary is changed. No provision is made if a male notary secures a change of name by court order.

The fee schedule for notaries to follow is provided by Section 21 of the Act of 1953, *supra*. This schedule would allow a certain amount of flexibility and naturally permit the specified fees set forth in Section 26 of the Act of 1949, *supra*, to be increased.

However, whether the provisions of "The Notary Public Law", the Act of August 21, 1953, Act No. 373, are to be applicable to presently commissioned notaries necessarily depends on the intention of the legislature, as expressed in said act. Furthermore, to subject these notaries to said provisions, it must appear that the legislature intended said act to have a retroactive effect. An act that is construed as being retroactive relates back and affects actions or facts occurring before the act came into force.

An act will not be construed as being retroactive, unless it is clear the legislature intended it to be so construed. In this regard, it is provided in Section 56 of the "Statutory Construction Act", the Act of May 28, 1937, P. L. 1019, 46 P. S. Section 556, that:

No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature.

This rule of statutory construction has been enunciated many times. In *Commonwealth, Appellant, v. Repplier Coal Company*, 348 Pa. 372, at 381, the Supreme Court of Pennsylvania affirmed the opinion of the court below which held:

(A) It is well settled that a statute will not be construed as retrospective unless there is a clear legislative intention that it is to have that effect. While there is no constitutional

inhibition against a statute having a retrospective operation (*Welch v. Henry*, 305 U. S. 134), both the statute law and the courts are emphatic that it shall not have such operation unless the intention clearly and manifestly appears.

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In *Farmers National Bank & Trust Co. v. Berks County Real Estate Co.*, 333 Pa. 390, 393, the court said:

"The general rule of construction is that statutes . . . must be construed prospectively except where the legislative intent that they shall act retrospectively is so clear as to preclude all questions as to the intention of the legislature." *Commonwealth v. Chester County Light & Power Co.*, *supra*; *Wettenge v. Robinson*, 300 Pa. 355.

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\* \* \* There is no single sentence in it which indicates any retroactive effect. and such legislative intention must be drawn, if drawable at all, from the whole Act.

In addition, the Supreme Court of Pennsylvania in *Horn & Brannen Co. v. Steelman*, 215 Pa. 187, at 191, has also held that:

\* \* \* "We always construe statutes as prospective and not retrospective, unless constrained to the contrary course by the rigor of the phraseology:" *Price v. Mott*, 52 Pa. 315.  
\* \* \*

An examination of the Act of 1953, *supra*, does not disclose, in our opinion, any indication that the legislature intended the act to have a retroactive effect. Therefore, said act may only be construed as being applicable prospectively. Accordingly, only notaries appointed under the act are subject to its provisions.

Since we have determined that the Act of 1953, *supra*, must be construed prospectively, we must next consider the effect of the repeal of prior legislation contained therein. In this respect, we conclude that such repeal does not affect any notary appointed under the prior law.

In the absence of any indication of intention to the contrary, the repeal of a law by an act which substantially reenacts the repealed law continues the repealed law in effect. This rule of construction is provided by Section 82 of the "Statutory Construction Act", *supra*, 46 P. S. Section 582, which reads:

Whenever a law is repealed and its provisions are at the same time re-enacted in the same or substantially the same terms by the repealing law, the earlier law shall be construed

as continued in active operation. All rights and liabilities incurred under such earlier law are preserved and may be enforced.

Consequently, the Act of May 18, 1949, P. L. 1440, under which presently commissioned notaries were appointed and authorized to act, although repealed by the Act of 1953, supra, must still be considered in effect for the duration of the terms of office of notaries appointed thereunder.

We are therefore of the opinion, and you are accordingly advised, the Act of 1953, supra, is not applicable to presently commissioned notaries. This act was intended by the legislature to have a prospective application not a retroactive application. All presently commissioned notaries are obliged, therefore, to adhere to the provisions of the Act of 1949, supra, for the duration of their present terms of office.

In answer to your questions, you are specifically advised as follows:

1. Notaries appointed under the Act of May 18, 1949, P. L. 1440, may continue to use notarial seals engraved in accordance with Section 16 of said act for the duration of their present terms of office. Notaries appointed under the Act of August 21, 1953, Act No. 373, are to use notarial seals engraved in accordance with Section 12 of said act.

2. The legislature, having intended the Act of August 21, 1953, Act No. 373, to have a prospective application, did not intend the Act of 1953, supra, to be applicable to notaries appointed under the Act of May 18, 1949, P. L. 1440. Such notaries must adhere to the provisions of the Act of 1949, supra, under which they were appointed, for the duration of their present terms of office.

3. Since the legislature intended the Act of August 21, 1953, Act No. 373, to be construed prospectively, Section 21 of the act is not applicable to notaries appointed under the Act of May 18, 1949, P. L. 1440.

Very truly yours,

DEPARTMENT OF JUSTICE,

FRANK F. TRUSCOTT,  
*Attorney General.*

ROBERT H. MAURER,  
*Assistant Deputy Attorney General.*