

**OPINION
50-118**

August 12, 1950 (OPINION)

OATHS

RE: Who May Administer

Your recent letter, undated, has been received and referred to my desk.

We know of no ruling by this office that village clerks are ex officio notaries public and, if such ruling has been made, it is certainly erroneous.

Our statute, section 47-1914, provides in part as follows:

"47-1914. The proof or acknowledgment of an instrument may be made in this state within the judicial district, county, subdivision, or city for which the officer was elected or appointed, before:

7. A township or village clerk or city auditor."

And section 44-0501 N.D.R.C. 1943 provides, in part, as follows:

"44-0501. The following officers are authorized to administer oaths:

5. Each city auditor, city justice of the peace, police magistrate, township clerk, and village board, within his own city, township, or village: * *."

These sections authorize a village clerk, a township clerk, and a city auditor, among others, to take and certify acknowledgments of signers of written instruments, such as deeds, mortgages, etc., and to administer oaths and certify the same, as in the making of any kind of an affidavit, or taking the oath of office of an officer in his village, township or city. His certificate should show that the acknowledgment or the administration of an oath, in the case of a village clerk, was taken or administered within his village. A village clerk can not, when not in his village, either take an acknowledgment or administer an oath. His certificate should be in the usual forms with the added statement that the acknowledgement or administration was made in his village. His certificate should be signed by him, and attested by the official seal of his office. The seal shown in your letter is the proper seal to use.

State of North Dakota

County of _____!

Village of _____!

On this _____ day of _____, 19___, before me, village

clerk of the village of Gackle, within said village, personally appeared _____, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he (or they) executed the same.

Village Clerk of the Village of
Gackle, County of Logan,
State of North Dakota

(VILLAGE SEAL)

In taking an oath, the certificate may be in this form:

"Subscribed and sworn to before me in the village of Gackle, this _____ day of _____. 19__.

Village Clerk of the Village of
Gackle, County of Logan,
State of North Dakota

(VILLAGE SEAL)

Our Supreme Court, in the case of Lee V. Crawford, 10 N.D. 482, 88 N.W.97, held that if the certificate did not show that the officer acted within his village, for instance, the court would presume that he so acted, but it is better to have the certificate itself show that the clerk acted within his own territory.

WALLACE E. WARNER

Attorney General