OPINION
56-139

August 13, 1956 (OPINION)

OFFICES AND OFFICERS

RE: Notary Public - Failure to Print Name

This is in reply to your letter of August 7, 1956 requesting an opinion of this office on the effect of the provisions of chapter 287 of the 1955 Session Laws that: "Every notary public taking an acknowledgment to any instrument, immediately following his signature to the jurat or certificates of acknowledgment, shall legibly print, stamp, or type his name * * *" on the validity of public documents such as petitions for measures to be placed on the ballot and other public documents.

There is in the first instance some doubt as to the application of chapter 287 of the 1955 Session Laws to initiative, referendum, or recall petitions. Section 16-0111 of the N.D.R.C. of 1943 requires in so far as here applicable that: "* * *Each copy of any petition provided for in this section, before being filed, shall have attached thereto an affidavit to the effect that each signature to the paper appended is the genuine signature of the person whose name it purports to be, and that each such person is a qualified elector.* * *"

An affidavit is generally recognized as a written declaration on oath sworn to by the declarant before a person who has authority to administer oaths. See Turner v. St. John, 8, N.D. 245, 78 N.W. 340, Torkelson v. Byrne, 68 N.D. 13, 113 A.L.R. 1213, N.W. 134. An acknowledgment is generally recognized as an appearance by a person before an officer for the purpose of acknowledging an instrument, and with a view towards giving it authenticity, making the admission to the officer that he has executed the instrument. See Acklin v. First Nat. Bank, 64 N.D. 577, 254 N.W. 769, Rasmussen v. Stone, 30 N.D. 451, 152 N.W. 809.

You will note that chapter 287 of the 1955 Session Laws refers to the taking of an acknowledgment, not the taking of an affidavit. It is, however, arguable that same was intended to apply to affidavits as well, due to the reference therein to "the jurat." In any case, however, we believe our previous opinion of August 8, 1955 and the principles therein stated would apply equally to the secretary of state's filing of the type of documents to which you refer. In essence, the opinion holds that chapter 287 of the 1955 Session Laws was intended to an does regulate the manner in which the notary public is required to act in performing the duties of his office and that it was not intended to and does not have the effect of either invalidating or preventing filing of instruments whereon the notary public has failed to include his printed, typed, or stamped name.

It is, therefore, our conclusion that the secretary of state must pass upon and file public documents in all other respects entitled to be passed and filed where the notary has failed

to include his typed, printed, or stamped name immediately following his signature to the jurat.

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