

**OPINION
59-80**

March 19, 1959 (OPINION)

DEPUTIES

RE: Authority, General - Authority - Acknowledgments

This is in reply to your letter of March 17, 1959, in which you ask how far an elected official can delegate authority to his or her deputy.

Section 1-01111 of the North Dakota Revised Code of 1943 provides:

"AUTHORITY OF DEPUTIES. Any duty imposed upon a ministerial officer, and any act permitted to be done by him, unless otherwise provided, may be performed by his lawful deputy."

You also ask if a deputy is authorized to take acknowledgments, is he or she authorized to take the acknowledgment of his or her superior, using the same seal that the officer uses in executing the instrument.

Section 47-1918 of the North Dakota Century Code provides as follows:

"DEPUTIES MAY TAKE ACKNOWLEDGMENTS. When any officer mentioned in sections 47-1914, 47-1915, and 47-1916 is authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of his principal deputy, or by such deputy as deputy."

Section 47-1914 lists the clerk of a court of record as one of the persons authorized to take an acknowledgment. The clerk is authorized, under section 11-1011 of the North Dakota Revised Code of 1943, to appoint a deputy.

Certain authorities have held that the deputy clerk, as such, may not certify the acknowledgment of his principal. This rule appears to rest upon a mere technicality, the theory being that the act of the deputy is the act of his principal and the same, in effect, as if the principal had taken his own acknowledgment. In most situations the deputy does, of course, act in the name of his principal. However, in North Dakota section of the North Dakota Revised Code of 1943 permits the deputy to take an acknowledgment either in the name of his principal or by the deputy as deputy. I believe that in view of the specific authority given to the deputy to take acknowledgments the acknowledgment by the deputy of the principal's signature is valid for the present purpose. However, since irregularities might arise, this does not appear to be a recommended procedure.

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