

SUBJECT: Allowing peace officers to serve as notaries public

COMMITTEE: Public Safety— favorable, without amendment

VOTE: 7 ayes — Oakley, Driver, Keffer, Madden, McClendon, Olivo, E. Reyna
0 nays
2 absent — Carter, Keel

WITNESSES: For — Lesley D. Moore, Odessa Police Department
Against — None

BACKGROUND : Art. 4, sec. 26, of the Texas Constitution requires the secretary of state to appoint a convenient number of notaries public to perform duties prescribed by law. Under the Government Code, notaries may take acknowledgments or proofs of written instruments, protest instruments, administer oaths, take depositions and certify copies of documents not recordable in the public records. Notaries public must execute a \$10,000 surety bond.

DIGEST: HJR 18 would amend the Texas Constitution to allow peace officers to serve as notaries public when performing their duties for matters arising in relation to those duties.

The proposal would be presented to voters at an election on November 4, 1997. The ballot proposal would read: “The constitutional amendment to allow peace officers to serve as notaries public.”

SUPPORTERS SAY: HJR 18 would free up police officers from unnecessary delays from having to coordinate notary services. Police officers called to a traffic accident can take a witness affidavit but must find a notary to make it official. Many times, a notary is needed late at night and on weekends, and officers and witnesses may spend a lot of time waiting for one to show up. In the interest of allowing peace officers to use their time most efficiently on behalf of the public, the state should allow officers to perform notarial services in limited instances. Adequate safeguards could be provided by limiting authority to duty hours and matters related to performance of duties. Furthermore, the

implementing legislation — HB 135 by West and Bailey — would prohibit officers from notarizing their own signatures or any document relating to a civil procedure.

Texas law gives other officials the same authority as a notary public in certain instances. Under the Government Code, commissioners of deeds have the same authority as notaries public to take acknowledgments and proofs of written instruments, to administer oaths, and to take depositions. Justices of the peace are also ex-officio notaries public under the Texas Constitution. The Human Resource Code allows representatives of the Department of Human Services to administer oaths and take acknowledgments regarding eligibility of applicants of public assistance.

The public trust placed in officers of the law would extend to officers' administering the ministerial duties of a notary public. Allowing peace officers to serve as notaries public would also save localities money because the police department would not have to provide surety bonds on police officers acting as notaries. Furthermore, this would relieve departments from constantly monitoring their staff to ensure sufficient numbers of notaries are available. In Florida, peace officers are notaries and have performed in that capacity quite well.

OPPONENTS
SAY:

Peace officers may not always be in a good position to be third party disinterested witnesses of a person's willingness or ability to swear to a statement. Part of a notary public's function is to make sure a person is not coerced into signing a document. Under Texas case law, an interested party to an instrument may be disqualified from functioning as a notary public.

A police officer might want, for the sake of convenience, to witness the signature of a person making a confession to a crime, but this would be inappropriate given the officer's interest in arresting and confining the individual. The officer could not witness the signature in a disinterested manner to determine whether the person was of sound mind and free of coercion. The courts would probably not uphold a confession in such cases.

NOTES:

HB 135 by West and Bailey, which would implement HJR 18, passed the

HJR 18
House Research Organization
page 3

House on the Consent Calendar on May 10 and has been referred to the Senate State Affairs Committee.

An identical joint resolution, HJR 69 by West, passed the House during the 74th regular session in 1995 but was left pending in the Senate Criminal Justice Committee.