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From: [REDACTED]
Sent: Wednesday, July 30, 2014 9:00 PM
To: SoS Rulemaking
Subject: Help shape Notary Rules

“APPROVED VENDOR” means a vendor approved by the secretary of state SECRETARY OF STATE who provides an approved course of instruction to notaries and prospective notaries for a fee.”

When “Approved Vendor” is used, I wonder whether it means, in totality, “someone who may offer a course for a fee” or “someone who offers a course that is sufficient in the eyes of the CO SOS for use for notarial training and testing.” If not the latter, that is, if a course cannot be offered except for with a fee, then there is something very wrong with the Statute either way (prior or else revised version); if the law does not require the fee, then the Statute perverts it. I would like to see the intentions clarified and as things are written now, it seems to be a Statute perverting intent and trampling quite a lot of higher law of the US, and the reason for notaries to exist.

This concern also arises in seeing “COURSE PROVIDER” where the scope of training by the entity is limited by the grammar to the members of the entity,

“TO PROVIDE NOTARY TRAINING TO ITS EMPLOYEES OR MEMBERS FREE OF CHARGE”.

These concerns are amplified in seeing the requirements of new rule 2

“THE SECRETARY OF STATE WILL GRANT CREDIT ONLY FOR COMPLETION OF COURSES OFFERED BY AN APPROVED VENDOR OR COURSE PROVIDER.”

which limit the sources of training to the entity described above as charging a fee, or an entity that provides training to its own members. The real issue stated plainly, of course, is that the rules thus far smack of corruption: perhaps lobbying or conscientious evasion of hostilities of course providers who want the fees to be required? Or is there a tax or fee paid to Colorado for approval?

Either way would boil down to essential corruption, and each case could be deemed *res ipsa loquitur*.

No government or part thereof is good—or legitimate—which enables unnecessary and unlawful rent-seeking. And there is no legitimate government interest in limiting speech in this area to approved-[as-acceptable-]vendors when anyone can cite the statutes and present the same material slightly remixed to the same end. The only

argument one might make against this statement is legal concern—if that were the case, however, why are any but lawyers teaching these materials?

As the words stand at the moment, it is impossible for someone to create a perfectly valid course and provide it free of charge. Even more absurdly, one could even buy a course that is currently approved, open it freely to the public, and fall out of compliance with the language of the statutes.

The ultimate “examination” of qualification, after all, is not training by someone who accepts money to regurgitate the Statute in an understandable way, but being able to pass the State’s test. If the State of Colorado wants to insist otherwise, then this Statute becomes superfluous law without a purpose, becomes an egregious violator of Amendment I, and mortally wounded under strict scrutiny.

“Training” needs to be re-defined to be based on merit, and not simply to exclude anyone who studies for themselves or receives training that is free but would otherwise be of the same or better qualities as approved courses—or simply change the rules to ensure such courses are approved without regard to whether they charge fees. The easiest way to do this is as follows:

DURING THE SIX MONTHS BEFORE APPLYING FOR A COMMISSION, A NEW APPLICANT MUST SUCCESSFULLY COMPLETE TRAINING AND PASS THE EXAM ADMINISTERED BY THE SECRETARY OF STATE. THE SECRETARY OF STATE WILL GRANT CREDIT ONLY FOR COMPLETION OF ~~COURSES OFFERED BY AN APPROVED VENDOR OR COURSE PROVIDER~~ AN “APPROVED COURSE OF INSTRUCTION.” THE SECRETARY OF STATE MAY REQUIRE A NOTARY WHO HAS COMMITTED MISCONDUCT MERITING A DISCIPLINARY PROCEEDING TO SUCCESSFULLY COMPLETE THE TRAINING AND EXAM.

If some kind of entity providing oversight is desired then another category besides “vendor” (as currently defined as fee-seeking) needs to be provided for, or “course provider” needs to eliminate the language restricting provision of training to members of a given “entity” equivalent to the “course provider.”

If the concern is offending the course providers, ignoring for the time being their web sites equivalent to a precocious computer-loving 12-year-old with In-Design in 1995 and efforts whose quality mimics a careful user of Movie-Maker from 2005, they can be told simply, that preserving privileges and hedging income streams through careful exclusions is not legitimate law in the United States, whose laws must be organically rational and not merely rationalized (something our lawyers scoff at, I know). Tell them they can offer more value, e.g. real interaction or additional training if they want to charge.

If Colorado is concerned with the quality of instruction, I don’t think any serious judge—not one wanting to avoid discipline from his or her superiors—would deem immediate-profit-motive to be an actual rational basis of sustaining quality; then there is the fact that one can imagine any number of ways to profit with no required fee of any kind.

There may have been a time that the argument could be made that there had to be a trusted entity providing oversight, but nearly all training classes for notaries are via online videos that can be completed in a day, have

little to no human interaction with them, and no actual review by a person: just a machine that tells whether the course is done, followed by a notification to a secretary of some sort who sends a certificate and emails or makes a call. The tests though, are automated—just like that of the State of Colorado.

I look forward to a cordial and rational response, and to hearing, of course, any correction such as “actually, the law these statutes interpret and explain actually do require fees in order for a course provider to be approved, no-fee course providers to train only their own members, and the Secretary of State to define acceptable training as provided only by one or the other.”

Beyond that, I otherwise hold Mr. Gessler and his department in the highest regards for maintaining integrity, efficiency, keeping costs within control, building a surplus etc. Your office is exemplary much of the time, and I thank you for it.

Best Regards,
J. Bradley Bulsterbaum