

FREEDOM FROM RELIGION *foundation*

P. O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG
February 11, 2011

Ross Miller
Secretary of State
101 N Carson Street, #3
Carson City, NV 89701-5708

Dear Mr. Miller:

I am writing on behalf of concerned residents of Nevada and members of the Freedom From Religion Foundation (FFRF) to alert you to objections to the oath that notaries must take prior to being sworn in. FFRF is a national nonprofit organization with more than 16,000 supporters across the country including over 100 members in Nevada. Our purpose is to protect the constitutional principle of separation between state and church and to represent the rights and views of nonbelievers.

It is our information and understanding that recently Mr. Cliff Hillington was sworn in as a notary public. It is our understanding that halfway through the oath Mr. Hillington asked Deputy Clerk Rebecca J. Neff if he could remove the "so help me god" portion. He was told he could not. We understand Mr. Hillington felt compelled to take the oath in order to complete the process of becoming a notary.

First and foremost, Article 6 of the United States Constitution prohibits States and the Federal Government from requiring any kind of religious test for public office, including a notary public. The U.S. Supreme Court held that "neither a State nor the Federal Government can constitutionally force a person "to profess a belief or disbelief in any religion." *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961). In that case, Torcaso refused to take an oath declaring the existence of a god as required by law and his appointment as notary public was revoked. *Id.* The U.S. Supreme Court held that to require a religious oath was a violation of both the First and Fourteenth Amendments of the Constitution. *Id.* Therefore, Deputy Clerk Neff violated Mr. Hillington's constitutional rights when she refused to allow him to take the secular affirmation. Her actions violate the United States Constitution.

Secondly, under Nevada Statute 240.030(1)(b), "each person applying for notary public must take and subscribe to the oath set forth in Section 2 of Article 15..." Article 15, Section 2 of the Nevada Constitution clearly provides for a secular affirmation:

"I,, do solemnly [solemnly] swear (or affirm) that I will support, protect and defend the constitution and government of the United States, and the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any state notwithstanding, and that I

will well and faithfully perform all the duties of the office of, on which I am about to enter; (if an oath) so help me God; (if an affirmation) under the pains and penalties of perjury.”

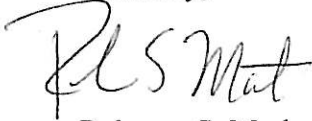
Therefore no person applying to be a notary public should be required to take a religious oath. Not providing a secular alternative violates Nevada law.

It appears that applicants coming to your office for the purposes of being sworn in are unaware that the option even exists. Therefore, it appears as though the Secretary of State is lending its power and prestige to religion, amounting to a governmental endorsement that excludes the 15% of the American population that is nonreligious (American Religious Identification Survey 2008). Instead, the option should be offered upfront; protecting the applicant from the potential for embarrassment and from serious discrimination.

Finally, we understand that Mr. Hillington feels uneasy about the way his commission to be a notary public – in particular the oath – was administered. He feels he cannot perform the duties of his commission until this issue is resolved.

Thus, we request that the Secretary of State Notary Division modify its procedure to ensure that all applicants are aware of their right to choose either an oath or affirmation. Deputy Clerk Neff must be made aware of the law. We also would like to request that Mr. Cliff Hillington be provided the opportunity to be sworn in again with his legal right to an affirmation. We would appreciate a written reply indicating the steps taken to avoid future violations of the Constitution and Nevada Statutes.

Sincerely,

A handwritten signature in cursive script, appearing to read "R S Markert".

Rebecca S. Markert
Staff Attorney