

Deputies, Minors As. County Officers.

County officers as defined by the constitution and Section 4312 of the Political Code, do not include their deputies. There is no law in this State providing that deputy must be over 21 years of age, and, in the absence of such a law, a minor is qualified to act as a deputy for the performance of the ministerial duties of any county officer.

Helena, Mont., Jan. 8th, 1906.

Hon. W. T. McKeown, County Attorney, Kalispell, Montana.

Dear Sir:—Your letter of the 3rd inst., relating to the appointment of a minor as Deputy County Assessor, received. You state that the appointee is every way qualified except that he is only 18 years of age, and ask for an opinion as to whether or not he is disqualified on account of his age

Section 2 of Article 9 of the State Constitution defines who are entitled to vote at general elections and for all officers elected by the people.

Section 11 of the same Article provides that any person qualified to vote at general elections and for state officers in this state shall be eligible to any office therein except as otherwise provided in the constitution, etc.

Sections 4310 and 4311 of the Political Code provide that no person is eligible to a county office, district or township office, who is not of the age of twenty-one years, a citizen of the state and elector of the county or district in which the duties of the office are to be exercised.

Section 4312 of the Political Code defines who are officers of a county, and nowhere in this section does it designate the deputy as a county officer.

Sections 1015, 4318 and 4319 and 4320 of the Political Code provide for the appointment of deputies of county officers. Nowhere are they

designated 'county officers' and none of these sections or any other that we can find, define the qualification of a deputy, or states what his age shall be in order to be eligible to such office.

It has been repeatedly held by the court of other states that the term "county officers," as used in our statute, does not include their deputies. See,

Jeffries v. Harrington, 17 Pac. (Colo.) p. 505.

Jamesville, Etc., R. Co. v. Fisher, 109 N. C. 1.

State v. Toland, 36 S. Carolina, 515.

Harkreader v. State, 35 Tex. Crim. Rep. 243.

State v. Phelps, 5 S. Dak. 481.

The above cases further hold that a deputy not being a county officer, and there not being any statutory provisions defining what qualifications a deputy must have in order to be legally appointed, that, therefore, "if the office is ministerial, such as calls for the exercise of skill and diligence only, minors may legally hold the same and execute the duties thereof; but if the office is a judicial one, or one which concerns the administration of justice, on account of their inexperience, and want of judgment and learning, they cannot be appointed to same."

You are therefore advised that, if the person appointed deputy assessor is otherwise qualified, the fact that he is only 18 years of age does not disqualify him from holding the position of deputy assessor, provided, that the duties performed by such deputy are ministerial only.

However, many of the duties of the county assessor are in the nature of judicial or quasi-judicial acts. It is the duty of the assessor to examine and pass upon the value of property for the purpose of assessing the same and the valuations so placed upon the property by the assessor become final for the purpose of assessment, unless the owner of the property appeals from the judgment of the assessor to the Board of Equalization.

We are of the opinion, therefore, that in order to avoid any possibility of a question being raised as to the legality of the assessment in your county by reason of the valuations upon which such assessment is based having been made by a minor, that such minor, if he acts as deputy assessor, should not be permitted to make the assessments of property, or fix valuations upon property for assessment purposes, and should perform only the ministerial duties connected with the books and records of the office.

Very truly yours,

ALBERT J. GALEN,

Attorney General.