

**Officer, "Under the State." Deputy, a Public Officer. Representative, Ineligible as Deputy County Officer.**

A deputy county clerk is a public officer. "Office under the State" includes county officers and their regular deputies, and under Sec. 7 Art. V of the Constitution, a representative cannot take an appointment as such deputy during the term for which he was elected representative.

Helena, Montana, April 1st, 1907.

Hon. W. L. Ford,  
County Attorney,  
White Sulphur Springs, Montana.

Dear Sir:—

Your letter of March 22nd received, in which you request an opinion upon the following question:

“Is a deputy county clerk and recorder a civil officer under the State within the meaning of such term as used in Sec. 7, Art. V. of the Constitution of the State of Montana?”

That a county clerk and recorder is a civil or public officer is so apparent, and so well settled by the decisions, that no discussion thereof is necessary. It is equally well settled that a deputy officer who possesses the powers and may perform the duties attached by law to the office of his principal is also a public officer.

Meecham on Public Officers, Sec. 38.

Section 980 of the Political Code provides as follows;

“In all cases not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of his principal.”

And Section 1015 of the same Code provides that deputies must within ten days after receiving notice of their appointment take and file an oath in the manner required of their principals.

Therefore, a deputy county clerk is as much a public officer as is the County Clerk and Recorder himself.

The question then arises as to whether the office of the County Clerk is a “civil office under the State” within the meaning of that term as used in said Section 7 of Art. V. of the State Constitution.

Many States have constitutional provisions prohibiting a Member of the Legislature from holding any other “office under the State.” The courts in such states, in construing such constitutional provision, have almost without exception held that the term “under the State” includes county officers. The Supreme court of Michigan in the case of Attorney General vs. Common Council, 70 N. W. 453, in construing such term said:

“The sheriff is a conservator of the peace, and it is the peace of the state. The county clerk keeps the record of the state courts and other state records for his county as to births, deaths, taxes, and elections, and makes reports to superior officers. The county treasurer, judge of probate, superintendent of schools, and the board of supervisors all perform the duties imposed upon them within their respective counties, it is true, but in obedience to laws of general application and regulating state affairs. The same can be said of township, school, and highway officers. These are all part and parcel of the one great scheme of state government.”

The case just cited contains an exhaustive review of the constitutional provisions of various states and the decisions thereon, and

shows conclusively that all county officers (and, of course, all deputies possessing the powers of their principal) are "civil officers under the state."

You are therefore advised that Section 7 of Art. V. of the State Constitution applies to a deputy county clerk, and that under an opinion given by this office to Otto Schoenfeldt on March 13th, 1907, a Member of the Legislature is prohibited from holding such office during "the term" for which he was elected.

Very truly yours,

ALBERT J. GALEN,

Attorney General.