

Registry Agent, City Jailer Not Eligible to Be.

Under the provisions of Section 3311, Revised Codes of 1907, policeman (jailer) is not eligible to any other public office.

Policeman (jailer) a public officer within provisions of Section 471, Revised Codes of 1907.

Oct. 5, 1910.

Martin Doty, Esq.,
County Clerk,
Helena, Mont.

Dear Sir:—

I am in receipt of your favor of the 4th inst., making request for an opinion from this office on the question as to whether one acting as city jailor at the time of his appointment is eligible to act as registry agent.

In answer to the inquiry, I will state, that one acting as city jailor is not eligible to act as registry agent. Sections 3304 and following, of the Revised Codes of 1907, provide for a system of police within the municipalities of the State. Section 50 of the Revised Ordinances of the city of Helena, 1908, provides that the respective city jailors are members of the police force. Section 471 of the Revised Codes provides among other things:

“No person a candidate for, or who holds a state, county, or other public office, other than that of notary public or postmaster, is eligible to, or shall hold the office of registry agent of election.”

A policeman (jailor) of a city is public officer holding his office as

a trust from the State, and not as a matter of contract between himself and the city.

28 Cyc. 497;

Revised Codes 1907, Mont. Sec. 16, Sub-Div. 8:

Sec. 8924 R. C.

The duties of police officers are of a public nature and appointment is devolved upon cities and towns by the Legislature as a convenient mode of exercising a function of government. The detection and arrest of offenders, the preservation of the public peace and enforcement of the laws, and other similar powers, and duties, with which police officers are entrusted, are derived from the law and not from the city or town under which they hold their appointment.

Butterick vs. Lowell, 79 Am. Dec. 721.

This opinion is further fortified by the provision of Section 3311, Revised Codes of Montana, which provides:

"No member of the police force shall * * * * hold any other office * * * *."

Yours very truly,

ALBERT J. GALEN,

Attorney General