

Public Office, Women Not Eligible to. Women, Not Eligible to Hold Public Office. Deputies of County Clerk, Women Not Eligible to.

I. A woman is not eligible to hold the office of deputy county clerk.

Helena, Montana, March 30, 1909.

Hon. B. B. Law, County Attorney, Bozeman, Montana.

Dear Sir:

I am in receipt of your letter of the 25th inst., submitting for the consideration of this office the following question:

“Is a woman legally qualified to hold the office of deputy county clerk?”

This question, as you state in your letter, has been practically decided by this office in opinions heretofore rendered.

In an opinion given to the Honorable County Attorney of Meagher County, April 1, 1907, (Opinions of Attorney General, 1906-'08, 57), it was held that a deputy county clerk and recorder is a civil officer under the state, within the meaning of the constitution. And in an opinion given to Honorable Joseph K. Toole, Governor of the State of Montana, on March 22, 1907, (Opinions of Attorney General, 1906-'08, p. 50), it was held, in effect, that women are not eligible to hold public office, except those enumerated in Art. IX., Sec. 10 of the state constitution; that is school offices, and especially does this apply to offices created by the constitution.

These matters having been so thoroughly discussed in the opinions above referred to, mentioned in your letter, we do not feel it necessary to go into the matter any further here.

The opinion referred to in your letter, addressed to the Honorable County Attorney of Flathead County, (Opinions of Attorney General, 1905-'06, p. 281), is not in point in this case, for there the so-called deputy assessor was simply a clerk or a copyist acting as an assistant to the assessor, and was not vested with an authority to act upon his own initiative in any matter whatsoever.

Section 11. Article IX., of the state constitution, prescribes the qualifications to hold office in the state, and confers authority upon the legislature to prescribe additional qualifications as “to offices hereafter created.” The office of county clerk is created by the constitution, Section 5, Article XVI. The office of deputy county clerk is created by

statute, but the deputy county clerk is vested with the authority to discharge the duties of his principal. Hence, in the discharge of such duties, and especially in the absence of the county clerk, the deputy is in effect county clerk, and while so acting as county clerk such deputy must certainly possess the qualifications required by the constitution for such an officer, otherwise the provisions of the constitution would be of little avail. A woman, however, who does act as deputy to the county clerk is a de facto officer; but, strictly speaking, she is not, under the provisions of the state constitution, qualified to hold such an office.

Very truly yours,

ALBERT J. GALEN,

Attorney General.