

**Deputy Game Warden, Eligibility of Women for Such Office.
Women, Eligibility to the Office of Deputy Game Warden.**

Deputy game wardens are public officers under the laws of this state, and therefore, women are not eligible to hold such office.

Helena, Montana, April 1, 1909.

Hon. Harry R. Cunningham, State Auditor, Helena, Montana.

Dear Sir:

I am in receipt of your request for an opinion upon the following proposition, to-wit:

"On March 19, 1909, Mr. Henry Avare, State Game and Fish Warden; filed in this office the appointment of Mrs. Charles B. Peyton, of Hamilton, as Special Deputy Fish and Game Warden, under the provisions of House Joint Resolution No. 13, approved March 10, 1909.

"I would respectfully request an opinion from your office as to whether Mrs. Peyton is legally entitled to hold the office of

Special Deputy Game and Fish Warden; and also whether this office is authorized to draw a state warrant on the fish and game fund for the salary due her from March 19th to and including March 31, 1909, said salary being at the rate of \$125.00 per month."

The right of a woman to hold a public office in this state has been passed upon in several opinions heretofore rendered by this office. In an opinion given to the Honorable Joseph K. Toole, (Opinions of Attorney General 1906-'08, page 50.), it was held that a notary public was a public officer, and that, therefore, a woman could not hold such office. In the same opinion it is also held that a woman could not hold the office of librarian of the historical library.

In the above opinion we said, in part:

"Section 10 of the same Article of the Constitution expressly provides that women shall be eligible to hold the office of County Superintendent of Schools and school district offices. By expressly providing that women were eligible to such offices it is apparent that the framers of the constitution intended that they should be eligible to no other office, and any question of doubt is settled for the reason that, under said Section 11, no person can be eligible to any other office than that of Superintendent of Schools and school district offices, unless he is qualified to vote at general elections, and as no person is qualified to vote at general elections excepting male persons possessing the qualifications defined by said Section 2, it necessarily follows that women are not eligible to hold the office of notary public."

The question then arises as to whether a deputy game and fish warden is a public officer. In the above opinion an exhaustive review of authorities are cited, defining what constitutes a public office, and an examination of the law providing for deputy game and fish wardens shows that their term of office is fixed by law at four years, and their duties are defined by law; namely, that they must inquire into violations of the game and fish laws of the state, institute prosecutions for violations of said laws, make arrests, and they are vested throughout the state with all the powers of a sheriff in making arrests and in the prosecution of offenses against the game and fish laws. They are required to give an official bond in the sum of one thousand dollars for the faithful performance of their duties, and are also required to file an official oath of office. Thus, we find that under all the rules laid down by the authorities for determining whether a person is holding a public office, deputy game and fish wardens are public officers. (See opinion referred to above.)

You are, therefore, advised that Mrs. Peyton is not eligible, under the state constitution of this state, to hold the office of deputy game and fish warden.

Prior to the introduction and passage of the resolution under which Mrs. Peyton was appointed, the last legislature introduced a bill to give her a pension. This bill was reported adversely as being in violation of

the constitution. Whereupon House Joint Resolution No. 13 was introduced for the apparent purpose of accomplishing the same thing that the original bill was intended to accomplish. If this resolution was intended as a method of donating money in the way of a pension to Mrs. Peyton, it is also in violation of Section 35, of Article V., of the state constitution, which provides that,

"No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association."

The constitutionality of this resolution was questioned by the members of the legislature at the time of its passage, and, while the Governor of the State approved the same, he accompanied his approval with a statement, which reads, in part, as follows:

"I am heartily in sympathy with the effort for the relief of Mrs. Peyton. I have, however, grave doubts of the legality of the method pursued by the Legislature in providing relief for Mrs. Peyton, and her right in law to hold the office which has been created for her."

We may add that we are heartily in accord with the charitable spirit shown by the legislature in passing this resolution, and would be as glad to see Mrs. Peyton receive some benefit as any one, but when a proposition of law is put up to this office for a constitutional construction it becomes our solemn and sworn duty to construe the same as a cold legal proposition; for constructions placed upon the laws of this state by the Attorney General will continue the rule to be followed in the future by state officers until such opinions are modified or reversed by the courts, and we, therefore, cannot allow our sympathies to control us in construing the constitution and laws of this state.

You are, therefore, advised, as stated above, that Mrs. Peyton is not legally qualified to hold this office, and that under the constitution you are not authorized to draw a warrant on the fish and game fund for the payment of her salary.

Very truly yours,

ALBERT J. GALEN,

Attorney General.