

**Treasure, County, Term of Office Of. County Treasurer,
Term of Office Of. Public Officers, Deputies Are. County
Offices, Eligibility of Deputies In. Women, May Not Act as
Deputies.**

A person cannot hold the office of county treasurer for more than two consecutive terms. He cannot, therefore, be appointed to serve for a longer period.

Women not being electors are not eligible to serve in the capacity of deputy assessor. Under the statutes of Montana, deputies are clothed with the same power as their principals. They must therefore have the same qualifications.

December 10th, 1910.

Board of County Commissioners,
Thompson, Montana.

Gentlemen:

I am in receipt of your letter of December 6th. signed by the chair-

man of your board, wherein you submit two questions for my official opinion. As you requested I telegraphed you yesterday my opinion as to the first question, which is herein confirmed. Said telegram reads as follows:

"Hon. C. H. Doenges,

Thompson, Montana.

"Am of opinion that appointment of Mr. Iff would render him ineligible for second term as county treasurer.

ALBERT J. GALEN,

Attorney General.

The question you presented was whether the appointment of the treasurer elect of Sanders county to serve for a period of about sixty days in filling the vacancy caused by the attendance of the present county treasurer upon the session of the legislature would preclude him from being re-elected two years hence to serve for a period of two years.

An examination of Article XVI, Section V, of the Constitution, which provides for the term of office of county officials other than those acting in a judicial capacity, and those whose duties are particularly directed to the administration of justice, discloses the inhibition against any person holding the office of county treasurer for more than two consecutive terms. This section of the constitution makes no distinction between acquiring the office by appointment and by election, but the prohibition goes directly to the holding of the office no matter how acquired.

You are therefore advised that in my opinion the appointment of the treasurer elect by the board of county commissioners, to fill this vacancy would render him ineligible to reelection at the next general election.

Your second question is as follows:

"Can a woman over the age of twenty-one years hold the office of deputy county assessor, and if so, must she have been a resident of Montana for one year before assuming the duties of deputy assessor?"

You are advised that in my opinion women are not eligible to the office of deputy assessor. Under various laws now in force in this state, it appears that deputies to county officers as distinguished from clerks and assistants, have the same powers conferred by statute upon their principals. The office of deputy is created by statute and the salary fixed, and the only distinction between it and a principal office is the uncertainty of tenure. This absence of a fixed or definite term, however, is not unusual either with deputies or principals who hold their office by virtue of appointment, as there is a well established principle of law that the appointing officer may at his pleasure remove the appointee, where the term is not fixed by law. Section 350 of the Revised Codes provides that in all cases, not otherwise specified, each deputy possesses the powers, and may perform the duties attached by law to the office of his principal. This statute is copied from the codes of California and before adoption by the

legislature of Montana, was passed upon and interpreted by the supreme court of California in the case of Rauer vs. Lowe, 107 Calif. 232; 40 Pac. 337, in which case it is held that deputies may perform official acts, and it seems to follow that official acts cannot be performed except by officers and that persons performing official acts, having the power of officers must also have the qualifications. Section 2965 of the Revised Codes is as follows:

"Whenever the official name of any principal officer is used in any law conferring power, or imposing duties or liabilities, it includes his deputies."

Of course, the power and duties conferred by law upon a county assessor include the valuation of property for purposes of assessment, and under the statute last above named, a deputy assessor has the same power.

This proposition is gone into at some length in an opinion rendered by me on January 8th, 1906, and found in the official opinions of the attorney general 1905-06, at page 281. The opinion above referred to, however, does not in my present opinion clearly express the law of this state with regard to deputy assessors, on account of the fact that Section 350, Revised Codes of Montana, is apparently not considered therein. The general question of the right of women to hold public office in the state of Montana, is gone into at length in an opinion addressed to Honorable Joseph K. Toole, then governor of the state of Montana, dated March 22, 1907, and found in opinions of attorney general, 1906-08, page 50, wherein it is held that under the constitution and the laws of the state of Montana, women are not eligible to hold public office, and in view of Sections 350 and 2965 which confer the same powers and duties upon deputies as is conferred by law upon their principals, it necessarily follows that women are not eligible to hold public office as deputies. It should be borne in mind, however, that the term "deputies" is herein used in the sense given it by the statutes of Montana, and this opinion does not hold that women are precluded from accepting employment in public offices for the purpose of performing duties which are purely ministerial. This distinction between deputies and clerks or subordinate officers is drawn in many places in the codes, particularly in Sections 361, 367, and 416. The last section 416, provides that all county officers may require their deputies to furnish a bond for the faithful performance of their duties.

You are therefore advised that in my opinion, women are not eligible to the office of deputy county assessor and under the authorities cited in the opinion of March 22d, 1907, directed to Governor Toole, above referred to, no person is eligible to hold any public office who has not been a resident of Montana for a period of one year.

Yours very truly,

ALBERT J. GALEN,

Attorney General.