

Woman, Right of to Hold Certain Office. Deputy County Clerk, Right of Woman to Be.

As a proposition of law, strictly speaking, a woman is not eligible to hold the office of Deputy County Clerk.

November 13th, 1913.

Hon. Gerald Young,
County Attorney,
Thompson Falls, Montana.

Dear Sir:

I am in receipt of your letter submitting the question relative to the eligibility of a woman to hold the office of deputy county clerk and recorder. You also make reference to an opinion heretofore rendered to W. T. McKeown, county attorney of Flathead County, under date of January 8th, 1906, reported in Opinions of Attorney General, 1905-06, p. 281. That opinion had reference to a clerkship in the office of the county assessor. Although the incumbent was called a deputy, he was in fact only a clerk, his duties relating only to the keeping of books, etc., and he did not attempt to perform any of

the duties of the assessor relative to the assessment of property or to the fixing of valuations for assessment purposes, but discharged only ministerial duties. This department has, however, many times considered this question, and in an opinion rendered to the Hon. Harry Cunningham, state auditor, on April 1st, 1909, it was held that women are not eligible to hold the office of deputy game wardens. This opinion was afterward affirmed by the supreme court.

Opinions Attorney General, 1908-10, p. 73.

State ex rel. Peyton v. Cuninghame, 39 Mont. 197.

In an opinion rendered by this department to Hon. Joseph K. Toole, governor, March 22, 1907, reported in Opinions Attorney General, 1906-08, at page 50, it was held that women were not eligible to hold the office of notary public, or the office of librarian of the historical library. On December 10, 1910, the opinion referred to in your letter and reported on page 4, Opinions Attorney General, 1910-12, it was held that a woman could not hold the position of deputy assessor. It is not always easy to determine when the position is a mere clerkship or an office, but where the appointee is authorized by statute to discharge the duties of his principal, and to act in the principal's name, it is usually considered a public office within the meaning of the Montana law. I am not able to reach any different conclusion from that reached in the opinions referred to. It is a fact that in several parts of the state women are holding these positions, none objecting thereto, and it is only in extreme cases, I apprehend, that anyone would care to object thereto; but as a proposition of law it must be held that, strictly speaking, they are not eligible.

Yours very truly,

D. M. KELLY,
Attorney General.