

Opinion No. 295.**Offices and Officers—Constables—
Deputy—Vacancy in Office—
Service.**

HELD: A constable may appoint a deputy whose power to serve writs is co-extensive with the county.

2. A deputy constable's office becomes vacant when he ceases to be a resident and elector of his township. Service of writs by such a person is a nullity.

3. A deputy constable must be an elector of the township for which appointed.

June 28, 1938.

Mr. John J. Holmes
State Auditor and Ex-officio
Insurance Commissioner
Helena, Montana

Dear Mr. Holmes:

You have submitted the question as to whether or not a Constable may appoint a person his Deputy who is a resident of another Township, with

the powers in said Deputy to serve process such as Writs of Attachment or Garnishments upon your department which is out of the Constable's Township.

Constables may appoint a Deputy (4731), and such appointment must be in writing and filed in the office of the County Clerk (4732). Constables and their Deputies can serve all process from the Court of a Justice of the Peace within the county (4859). Process includes Writs of Attachment or Garnishments (4773).

In order to be qualified to be appointed or to hold the office of a Deputy Constable, the appointee must be an elector of the Township in which the Constable holds his office (40), and to be an elector, he must be a resident. When the Deputy Constable ceases to be a resident of his Township, the office automatically becomes vacant. Subdivision 5, Section 511. *Anderson vs. Fousek*, 91 Mont. 448.

As to whether or not the Deputy Constable was a resident of the Township wherein he was appointed at the time of his appointment, or ceased to be a resident prior to his levying of said Writ, is a matter for you to determine under all of the facts, subject to the rules in determining residence as found in Section 33.

If you find that the Deputy Constable was not a resident of the Township wherein the Constable holds his office at the time of said service, you are without authority or right to honor the service of said Writ.