

Opinion No. 8

Offices and Officers—Deputies, Qualification Upon Re-Appointment, Bond Upon Re-Appointment.

HELD: A deputy who is re-appointed by his principal, when the latter enters upon a new term of office, must qualify anew in the manner prescribed by statute or a vacancy occurs under the provisions of Section 511 R. C. M. 1935.

December 21, 1936.

Hon. Sam W. Mitchell
Secretary of State
The Capitol

Dear Mr. Mitchell:

In the case of *State ex rel Nagle v. Stafford*, 99 Mont. 88, the Montana Supreme Court held that our statutes relating to qualification of state officers make no distinction between an official elected or appointed for the first time to the office, and an official re-elected or re-appointed; and that one who is re-appointed must qualify anew in the manner prescribed or a vacancy occurs in the office, under the provisions of Section 511, R. C. M. 1935. You have requested my opinion whether that rule applies to the deputy state officers, assistants and clerks who are required to give bonds under the provisions of Section 464, R. C. M. 1935. Section 511, referred to above, provides that an office becomes vacant upon neglect or refusal of the official to file his official bond within the time prescribed. (Subd. 9.) We shall not confine this opinion to officers required to furnish bond under the provision of Section 464, R. C. M. 1935, but shall consider the question generally as relating to all statutes requiring the posting of official bonds. Our reason is that Section 511 applies to all public officers, and is not limited to officers mentioned in Section 464.

A deputy's term of office expires with his principal's term of office; if the principal is re-elected or re-appointed the deputy must be appointed anew. (Throop on Public Officers, sections 304, 582 and 632; 46 C. J. 1062.) Upon re-appointment the deputy will, of course, enter into a new term of office. Every bond demanded of and taken

from a deputy for the faithful discharge of his duties is an official bond, and is subject to the same rules as other official bonds. (22 R. C. L. 587, Sec. 304; 82 Am. Dec. 764, Note; *Hubert v. Mendheim*, 64 Cal. 213, 30 Pac 633; *Gradle v. Hoffman*, 105 Ill. 147; *Southern Surety Co. v. Kinney*, 74 Ind. App. 205, 127 N. E. 575; *Mechem on Public Officers*, page 170.) Where provision is made by statute for the position of deputy, such deputy is regarded as a public officer. (46 C. J. 1062.)

It is my opinion, therefore, that the rule of *State ex rel Nagle v. Stafford*, 99 Mont. 88, applies where the principal has been re-elected or re-appointed to office and, upon entering into the performance of his duties for the new term, re-appoints his deputy. The deputy so re-appointed must qualify anew in the manner prescribed by statute or a vacancy occurs in the office under the provisions of Section 511, R. C. M. 1935.

The same consideration would apply to all subordinates who are in fact deputies, with powers as such, whether they be designated as "assistants" or by some other title. But Section 511 could not apply to subordinates who are merely employees and who are not in fact officers. Said section applies only to "an office." It should not be assumed, however, and it is not intended to be implied herein, that such subordinates who are merely employees are entitled to continue in employment and are entitled to collect compensation when they fail to post a bond required of them by statute. The State Board of Examiners or other examining board could and should, in such a case, refuse to approve any payroll or claim for compensation unless the employee has posted any bond required of him by statute.