

No. 414

**UNDERSHERIFF—APPOINTMENT—SIXTH CLASS
COUNTY—ELIGIBILITY OF WOMAN**

Held: The word "person" as used in our State Constitution and statutes includes women as well as men;
The force and intent of our Constitution and the statutes of this state raise no express or implied barrier to the appointment of a woman, who is a qualified elector, to the office of undersheriff;
The appointment of an undersheriff in a sixth-class county is exclusively the prerogative of the sheriff;
After such appointment is so made by the sheriff, and the oath of office taken by the appointee, such appointee is entitled to the salary of such office, to be paid as other county officers' salaries.

May 13, 1942.

Mr. Cedor B. Aronow
County Attorney
Toole County
Shelby, Montana

Dear Mr. Aronow:

You have submitted the following:

"Mr. C. B. Alsup, Sheriff of Toole County, Montana, enlisted in the Army of the United States, and is now training at an army camp in North Carolina. Toole County is a county of the sixth class.

"Upon the induction of C. B. Alsup into the active military service of the United States, the Board of County Commissioners of Toole County appointed the undersheriff, Mr. Fagerberg, Acting Sheriff of Toole County, under the provisions of Chapter 47, Laws of 1941. Mr. Fagerberg immediately filed his official bond and oath, and then appointed Mrs. Alsup (wife of C. B. Alsup) as his undersheriff, in accordance with Section 4775, Revised Codes of Montana, 1935. The Board of County Commissioners has notified Mr. Fagerberg that it would not approve the appointment of Mrs. Alsup for the reason that the position of Undersheriff was not a proper position for a woman.

"Is Mrs. Alsup entitled to serve as such undersheriff and is the Board of County Commissioners required to pay her the salary of deputy sheriff?"

In answering your question, it will be noted Section 4775, Revised Codes of Montana, 1935, provides:

"The sheriff, as soon as may be after he enters upon the duties of his office, **must**, except in counties of the seventh and eighth classes, appoint some person undersheriff to hold during the pleasure of the sheriff. Such undersheriff has the same powers and duties as a deputy sheriff." (Emphasis mine.)

The appointment by the Board of Commissioners of Mr. Fagerberg as acting sheriff under the provisions of Chapter 47, Laws of 1941, and his qualification by his filing his bond and oath, constituted him as the acting sheriff of Toole County and he assumed all the rights, responsibilities and duties of the office of sheriff. One of the duties he assumed was to appoint an undersheriff as soon as may be after he enters upon the duties of office. This he apparently did by appointing Mrs. Alsup as such undersheriff.

There is no restriction in law on the holding of the office of undersheriff in the state of Montana by a woman. All such distinction was swept aside by the granting of general suffrage to women.

Our State Constitution of Montana, Section 7, Article IX, provides:

"No person shall be elected or appointed to any office in the state, civil or military, who is not a citizen of the United States, and who shall have resided in this state at least one year next before his election or appointment.

Section II, Article IX, provides:

"Any person qualified to vote at general elections and for state officers in this state, shall be eligible to any office therein except as otherwise provided in this constitution . . ."

Our Supreme Court, having under consideration the foregoing provisions of our Constitution, held:

"The effect of Section II of Article IX, except as otherwise provided in the Constitution, is to make those qualified to vote for an

officer eligible to hold the office. This was so held in the case of State ex rel. Shea v. Cocking, 66 Mont. 169, 213 Pac. 594, 595, 28 A. L. R. 772."

Wilson v. Horsington, 110 Mont. 20, 98 Pac. (2nd) 369.

Section 410, Revised Codes of Montana, 1935, provides:

"No person is capable of holding a civil office in this state, who at the time of his election or appointment is not of the age of twenty-one years and a citizen of this state."

Section 2 of Article IX defines the qualification of an elector. It is therefore my opinion:

The word "person" as used in our State Constitution and statutes include women as well as men;

The force and intent of our Constitution and the statutes of this State raise no express or implied barrier to the appointment of a woman, who is a qualified elector, to the office of undersheriff;

The appointment of an undersheriff in a sixth class county is exclusively the prerogative of the sheriff;

After such appointment is so made by the sheriff, and the oath of office taken by the appointee, such appointee is entitled to the salary of such office, to be paid as other county officers' salaries.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General