

No. 480

**OFFICERS—CLERK OF COURT—DEPUTY COUNTY
OFFICERS**

Held: In order to be qualified to hold the position of Deputy Clerk of the District Court, a person must be at least twenty-one years of age.

September 10, 1942.

Mr. E. P. Conwell
County Attorney
Carbon County
Red Lodge, Montana

Dear Mr. Conwell:

You have asked this office for an opinion whether a person nineteen years of age is qualified to hold the position of deputy clerk of the district court.

Section 11 of Article IX of the Montana Constitution provides any person qualified to vote at general elections shall be eligible to any office in the state.

Section 2 of said Article IX requires a person to be twenty-one years of age or over in order to be entitled to vote.

The Constitution does not create the position of deputy county office, but by acts of the Legislative Assembly, enacted since the adoption of the Constitution, such office has been created by implication, if not directly.

Thus, Section 4874, Revised Codes of Montana, 1935, among other things, provides the board of county commissioners shall have the power to fix and determine the number of deputy county officers.

Section 4733, Revised Codes of Montana, 1935, provides whenever the official name of any principal officer is used in any law conferring power, imposing duties or liabilities, it includes his deputies.

Section 435, Revised Codes of Montana, 1935, provides deputies must, within ten days after receiving notice of their appointment, take and file an oath in the manner required of their principals.

There are other sections of the codes which could be cited, but these are sufficient to demonstrate what a deputy, being required to take and file the official oath of office and having the same powers, duties and liabilities as the principal, is a county officer.

Section 4723, Revised Codes of Montana, 1935, requires a person to be at least twenty-one years of age in order to be eligible to a county office, being a restatement of the constitutional provision above quoted.

It is, therefore, the opinion of this office, that in order to be qualified to hold the position of deputy clerk of the district court, a person must be at least twenty-one years of age.

This opinion is in harmony with prior opinions of this office appearing in Volume 2, Page 56, and Volume 9, page 218, Report and Official Opinions of Attorney General, and is not in conflict with the opinion appearing in Volume 1, page 281, which limited the opinion to a person performing ministerial duties, a far different situation to the one confronting a deputy clerk of the district court, who in many instances will perform duties of a judicial nature, particularly in probate matters in the absence of the district judge, and will also be administering and certifying oaths and affirmations.

Sincerely yours,

R. V. BOTTOMLY
Attorney General