

Opinion No. 208.

Sheriffs—Deputy Sheriffs—Appointment of, Deputy Sheriff—County, Resident of—Resident, Deputy Sheriff.

Held: A deputy sheriff appointed by the sheriff must have been a resident of the state for at least one year, and a resident of the county where such appointment is made for a period of at least six months prior to the date of said appointment.

October 5, 1946.

Mr. Edison W. Kent
County Attorney
Granite County
Philipsburg, Montana

Dear Mr. Kent:

You have asked my opinion on the following:

You ask if the sheriff of a county may appoint a deputy sheriff who is not a resident of such county at the time of his appointment. You state that the sheriff has not been able to find any person who is a resident of his county who will serve as deputy sheriff.

I understand the serious condition and situation with which the sheriff is confronted. However, our legislature has defined the qualification of a deputy sheriff to be appointed, and by Section 4879, Revised Codes of Montana, 1935, the legislature has definitely stated:

“No sheriff of a county, mayor of a city, or other persons authorized by law to appoint deputies, marshals or policeman in this state . . . shall hereafter appoint as such special deputies, marshals or policemen any

person who shall not have resided continuously in this state for a period of one year at least, and in the county where such appointment is made for the period of at least six months prior to the date of said term . . .”

From the foregoing statute, it is readily seen that a deputy so appointed by the sheriff must have been a resident of the state for at least one year, and a resident of the county where such appointment is made for a period of at least six months prior to the date of said appointment.

As the Supreme Court has often stated, we must take the law as we find it. The courts may not read into the law something that is not there, nor may they take from the law something that is unequivocally expressed therein.

I agree with you that until the legislature sees fit to amend or change the law in this respect, it is my opinion the sheriff has no authority to appoint a deputy sheriff who does not meet the residential qualifications above required.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General