

**Opinion No. 28**

**Deputy County Treasurer—  
Qualifications, Deputy County  
Treasurer—Age, Deputy County  
Treasurer.**

**Held:** The deputy of a county treasurer must have the same qualifications as the principal under whom he serves, and therefore be at least twenty-one years of age.

April 24, 1947

Mr. Chester E. Onstad  
County Attorney  
Powder River County  
Broadus, Montana

Dear Mr. Onstad:

You have requested an opinion regarding the necessary age of a deputy in the office of the County Treasurer.

At the outset it is necessary to determine the significance of a deputy.

A deputy is a person appointed as a substitute for another and empowered to act for him in his name and behalf in all matters in which the principal may act. Further, a deputy is to be distinguished from an assistant who helps or assists while ordinarily occupying a mere clerical position. (43 Am. Jur. 218-219). In some states a further distinction is noted in that the deputy must take an oath while the assistant does not. However, in Montana, Section 435, Revised Codes of Montana, 1935, it is provided that both the deputy and assistant shall take the same oath as their principal.

In Montana the statutory provision as to age of the principal is Section 4723, Revised Codes of Montana, 1935:

"No person is eligible to a county office who at the time of his election is not of the age of twenty-one years, a citizen of the state, and an elector of the county in which the duties of the office are to be exercised, or for which he is elected."

A deputy is not a public officer (Adami v. Lewis and Clark County, 114 Mont. 557, 138 Pac. (2d) 969, page 971), yet he possesses the same powers and performs the same official duties as his principal under Section 418, Revised Codes of Montana, 1935, which provides:

"In all cases not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of his principal." (See also Rauer v. Lewis, 107 Cal. 232, 40 Pac. 337, holding under a statute the same as Section 418, Revised Codes of Montana, 1935, that the acts of a deputy are official acts.)

In view of this section it would appear necessary that the deputy be subject to the same qualifications as the principal. It has been so held by a former Attorney General in Volume 4, page 4, Reports of the Attorney

General, where, in discussing the qualifications of a deputy prior to women's suffrage, it was held that a woman could not be a deputy because she could not become a public officer. Although the Adami case holds that a deputy is not a public officer due to lack of tenure, the rule of Attorney General Galen's opinion, *supra*, still applies in order to insure that all who perform official acts have the necessary qualifications. To further substantiate this contention, we find that Section 4733, Revised Codes of Montana, 1935, is as follows:

"Whenever the official name of any principal officer is used in any law conferring power, imposing duties or liabilities, it includes his deputies."

While the County Treasurer has been held to be a ministerial officer (Rosebud County v. Smith, et al., 92 Mont. 75, 80, 9 Pac. (2nd) 1071) and while opinion No. 480, Volume 19, Reports and Official Opinions of the Attorney General, has, at least impliedly, held that a deputy need not be twenty-one years of age if he is performing ministerial functions, it is my opinion that in view of the analysis noted in the preceding paragraphs, the distinction between the type of function has no bearing, and the deputy must have the qualifications of his principal in any case. Especially is this true because of the provisions of Section No. 418, Revised Codes of Montana, 1935.

However, there is a distinction between the qualifications of a deputy and an assistant, it not being necessary that the qualifications of the latter be the same as the principal.

It is, therefore, my opinion that the deputy of a county treasurer must have the same qualifications as the principal under whom he serves, and therefore be at least twenty-one years of age.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General