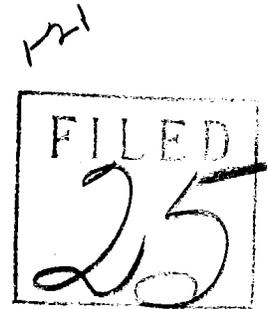


OFFICERS: Assistant Prosecuting Attorney must
QUALIFICATIONS: have same qualifications as Prosecuting
DEPUTIES: Attorney.

January 21, 1941

Mr. Arthur Duvall
Prosecuting Attorney
Bates County
Butler, Missouri



Dear Sir:

This is in reply to yours of recent date, wherein you request an official opinion on the following statement of facts:

"Would you please advise me as Prosecuting Attorney of Bates County, Missouri as to whether I have the right to appoint as my assistant a young man who has not lived in Bates County a year.

"The statutes seem to contemplate that the assistant shall have the same qualifications as the Prosecuting Attorney, but whether this refers to the legal qualifications alone or the residential as well I am unable to ascertain."

Qualifications of a prosecuting attorney are set out in Section 11309, R. S. Mo. 1929, in the following language:

"At the general election to be held in this state in the year A. D. 1880, and every two years thereafter, there shall be elected in each county of this state a prosecuting attorney,

who shall be a person learned in the law, duly licensed to practice as an attorney at law in this state, and enrolled as such, at least twenty-one years of age, and who has been a bona fide resident of the county in which he seeks election for twelve months next preceding the date of the general election at which he is a candidate for such office and shall hold his office for two years, and until his successor is elected, commissioned and qualified."

It will be noted that one of the qualifications required under this section is that the Prosecuting Attorney must have been a resident of the county in which he seeks election for twelve months preceding the date of the election.

Section 11336, R. S. No. 1929, permits the Prosecuting Attorney to appoint an assistant. This section provides as follows:

"Each prosecuting attorney in this state may appoint one assistant prosecuting attorney, who shall possess all the qualifications of a prosecuting attorney, and be subject to all the liabilities and penalties for failure or neglect to discharge his duty to which prosecuting attorneys are now or may hereafter be made liable."

This section provides that the assistant shall possess all the qualifications required of the prosecuting attorney. It will be noted that this clause says all of the qualifications. Said Section 11309, supra, lists the different qualifications.

In 41 Mo. 153, State ex rel. Wingate, Attorney-General, v. Woodson, l. c. 154, the court, in speaking of the power of the State to fix qualifications of officials said:

"The power of the State to declare in its fundamental law, or, when that is silent upon the subject, by legislative enactment, what shall constitute the test of eligibility to office, is as clear and unquestionable as is the power to fix the qualifications of voters; * * * * *"

It would, therefore, seem that the qualifications as to residence must be met by the assistant prosecuting attorney the same as by the prosecuting attorney.

CONCLUSION.

It is, therefore, the opinion of this department that an assistant prosecuting attorney must have the same qualifications as to residence as does the prosecuting attorney.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General

TWB:CP