

DEPUTY COUNTY CLERK: There are no minimum age requirements for a deputy county clerk of a fourth class Missouri county.



January 5, 1953

1-6-53

Honorable J. B. Schnapp
Prosecuting Attorney
Madison County
Fredericktown, Missouri

Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your opinion request:

"Paul Rose, the County Clerk of Madison County, Missouri requests that I secure from you your opinion as to whether or not a Deputy of the County Clerk of Fourth Class County must be over the age of twenty-one years, or whether it is permissable for the Deputy County Clerk to be under the age of twenty-one years.

"In other words we desire to know the minimum age requirement for the Deputy County Clerk of a Fourth Class County."

Section 51.050, RSMo 1949, states that a person elected or appointed county clerk must be "over the age of twenty-one years."

Section 51.460, RSMo 1949, states that a county clerk in fourth class counties shall be entitled to employ deputies and assistants. The section also states the sums that the clerk will be allowed to pay such deputies and assistants, which sums are based upon population. Nowhere in the chapter on county clerks is there any statement regarding the qualifications of deputies. Nor are we able to find, in the general statutory law, any qualification requirement for deputies which we believe could apply to a deputy county clerk. We must therefore approach the question from another direction.

As we stated above, the law does require that the county clerk must be "over the age of twenty-one years," which means

we take it, that the county clerk need simply be twenty-one. One day past that age would be "over." There is nothing in the law of Missouri regarding the duties of deputy county clerks. However, in the case of Springer v. McSpadden, 49 Mo. 299, a case dealing with the powers of a deputy circuit clerk, we find the following general statement of law regarding the powers of deputies (l.c. 300, 301):

"Although the statute, when speaking of the duties and powers of the clerk in respect to taking acknowledgments, refers to him alone, yet it by no means follows that he cannot act by deputy. The law, in prescribing the duties of clerks, invariably designates the clerk alone, yet the functions of his office may always be performed by deputy duly appointed.

"No discrimination is made by saying that the clerk shall do certain acts in his own proper person, and that others may be done by the deputy; but the language is broad and explicit, that the deputies may, in the name of their principals, perform the duties of the chief clerk. The deputy has no authority to act in his own name, but when he performs an official act in the name of the principal, it is the act of the principal himself. Taking the acknowledgment of deeds and granting certificates thereon are among the powers expressly devolved upon the clerk, and the deputies, acting in the name of their principals, have the same power as the clerks themselves. As an historical fact, we know that the deputies have exercised this power in the name of their principals ever since the organization of this State. The practice has been universally acquiesced in the courts and the profession, and, as far as our knowledge extends, it was never before challenged. To sanction the ruling of the Circuit Court in this case would be to unsettle and destroy the title to nearly all the land in the State."

The case of Sawyer v. Mangni, 43 N.W. (2d) 775, holds that a deputy can execute all the ministerial duties to be performed by the incumbent of the office.

In the case of Blake v. Allen, 20 S.E. (2d) 552, the holding is that the position of a deputy is that of a subordinate who has power to do every act which his principal may do.

The case of Styres v. Forsyth County, 194 S.E. 305, holds that a deputy is one who, by appointment, exercises an office in another's right.

The case of Carter v. Hornback, 139 Mo. 238, holds that a deputy is one who, by appointment, exercises an office in another's right, having no interest in such office, but doing all things in his principal's name, and for whose misconduct the principal is answerable.

In the absence of any constitutional or statutory requirements in regard to age, we believe that the general rule as found in 43 C.J.S., Infants, Section 24, page 85, would apply and infancy would not be regarded as a disqualification. Said rule is stated as follows:

"At common law infants are eligible to offices which are ministerial in their character and call for the exercise of skill and diligence only, but they are not eligible to offices which are judicial or concern the administration of justice, nor should offices imposing duties to the proper discharge of which judgment, discretion, and experience are necessary be entrusted to infants. In accordance with these rules it has been held that an infant may be an appraiser of land to be sold on execution, an overseer of a public road, or a deputy county clerk. * * *"

In the case of Harkreader v. State, 33 S.W. 117, the court of criminal appeals of Texas considered a similar question as the one here proposed under statutory provisions substantially the same as ours and involving a deputy county clerk. In their opinion the court reviewed pertinent authority upon the subject and stated as follows:

"The principal ground of contention on the part of appellant * * * is because the deputy clerk, * * * was not at the time 21 years of age; * * *. There is no statute defining the qualifications of deputy clerks; or what character of persons may be appointed

to said office. * * * Looking into the decisions of the courts of other states as to this and kindred subjects, we find the rule stated to be this: If the office is ministerial, such calls for the exercise of skill and diligence only, minors may legally hold the same, and execute the duties thereof; * * *

"It is to be observed, as before stated, that neither our constitution nor laws on the subject prescribe any qualification such as would render a minor ineligible or disqualified from holding the office of deputy county clerk. As to the clerk himself, there might be some question, as he is required to execute a bond, which might involve the capacity to so contract, but there is no such requirement as to deputy county clerks. The authorities cited establish the doctrine that, if the duties of deputy county clerk, under the provisions of our statutes, are ministerial, a minor can receive the appointment, and execute the duties required of said deputy. The duties of county clerks in our state are regulated by statute, and they appear to be purely ministerial; and, in addition to their other functions, as has been seen, they have the general power to administer all oaths and affirmations, and to take affidavits and depositions to be used as provided by law in any of the courts. Sayles' Civ. St. art. 1149. Deputies are authorized to act in the name of their principal, and to do and perform all such official acts as may be legally done and performed by such clerk in person. By virtue of his office the county clerk is empowered to administer oaths and affidavits generally. This power appertains to his office, and belongs to his official duties, and his deputy, in this regard, has such power and authority as he can exercise; and, in our opinion, the appointment of O.L. Bishop, by the clerk of the county court of Johnson county, as his deputy, was a legal and valid appointment."

Since a deputy acts for and through his principal (Springer v. McSpadden, 49 Mo. 299, supra) and since the principal is responsible for the acts of his deputy, we see no reason under our law to preclude a minor from being appointed deputy county clerk. Certainly, the duties of the office of county clerk are

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ministerial and would therefore fall within the above cited rule.

CONCLUSION.

It is the opinion of this department that there are no minimum age requirements for a deputy county clerk of a fourth class Missouri county.

Respectfully submitted,

HUGH P. WILLIAMSON
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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