

PUBLIC ADMINISTRATOR: With respect to the qualifications of public administrator: (1) Article VII, Section 8, of the Constitution of 1945 requiring that the public administrator be a citizen of the United States, and a resident of this state one year next preceding his election. (2) The provisions of Section 473.117, paragraph 1, RSMo 1959, relative to persons disqualified from administering estates, and Section 475.055, paragraph 2, RSMo 1959, relative to the qualifications of guardians apply to the office of public administrator.

September 22, 1965

OPINION NO. 347

Honorable Thomas G. Woolsey
State Senator, 33rd District
Mason Building
Versailles, Missouri



Dear Senator Woolsey:

This opinion is in response to your request of September 1, 1965, in which you inquire as to the qualifications for the office of public administrator in general, and as to the minimum age requirement, particularly in a fourth-class county.

The office of public administrator was created by the Legislature and as such is not a constitutional office. The provisions relating to this office are contained within Sections 473.730 to 473.773, RSMo 1959.

The public administrator, however, is a public officer and is specifically declared to be an officer for the county in which he is elected. Section 473.737, RSMo 1959, provides in part, in that respect, as follows:

"Each public administrator elected, as now or as hereafter provided for in Sections 473.730 to 473.767, is hereby declared to be an officer for the county in which he is elected and for the city of St. Louis, if elected therein."

As a public officer, therefore, the constitutional provisions governing his qualifications are contained within Article VII, Section 8 of the Missouri Constitution of 1945, which states:

"No person shall be elected or appointed to any civil or military office in the state who is not a citizen of the United States, and who shall not have resided in this state one year next preceding

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his election or appointment, except that the residence in this state shall not be necessary in case of appointment to administrative positions requiring technical or specialized skill or knowledge."

This section therefore requires that the public administrator shall have resided in this state for one year next preceding his election and that he be a citizen of the United States.

Although the sections we have cited relative to the office of public administrator do not set forth the necessary qualifications, we nevertheless note that Section 473.750, RSMo 1959, indicates that other chapters and their provisions are pertinent to the office of public administrator. Section 473.750 is as follows:

"In addition to the provisions of Section 473.730 to 473.767, he and his securities shall have the same powers as are conferred upon, and be subject to the same duties, penalties, provisions and proceedings as are enjoined upon or authorized against executors and administrators, guardians and curators by chapters 472 to 475, RSMo, so far as the same may be applicable. He shall have power to administer oaths and affirmations in all matters relating or belonging to the exercise of his office."

In that respect, we note that Section 473.117, RSMo 1959, sets out concisely the persons disqualified from administering. Section 473.117, paragraph 1, states:

"1. No judge or clerk of any probate court, in his own county, or his deputy, no person under twenty-one years of age, or of unsound mind, no habitual drunkard, and, except as otherwise provided by law, no person who is a non-resident of this state, shall be executor or administrator. No executor of an executor, in consequence thereof, shall be executor of the first testator."

In addition, Section 475.055 RSMo 1959, states in part as follows:

"2. No judge of the probate court or sheriff or clerk of the probate court or deputy of either in his own county, no person under twenty-one years of age, other than as provided in subsection 1, or of unsound mind, no habitual drunkard or narcotic addict and, except as otherwise provided by law, no person who is a nonresident of this

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state, shall be appointed guardian of the person
or of the estate. * * * * "

The exception contained in the above paragraph following the provision disqualifying persons under twenty-one years of age applies only to the appointment of a parent who is a minor.

The statutes do not draw any distinction in the qualifications for the office of public administrator insofar as the classification of counties is concerned.

CONCLUSION

It is therefore the opinion of this office that:

(1) The public administrator is by law a public officer and, as such, must meet requirements of Article VII, Section 8, of the Missouri Constitution of 1945 and be a citizen of the United States, and a resident of this state one year next preceding his election.

(2) The provisions of Section 473.117, paragraph 1, RSMo 1959, relative to persons disqualified from administering estates, and Section 475.055, paragraph 2, RSMo 1959, relative to the qualifications of guardians apply to the office of public administrator and, in addition to the other persons therein disqualified, no person under twenty-one years of age may occupy such office.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,


NORMAN H. ANDERSON
Attorney General