

OFFICE OF RECORDER: There is no minimum age requirement for a deputy recorder of deeds in a third-class county in which the office of recorder and circuit clerk are separate. There is no minimum age requirement required for a person to sign the margin of record as the assignee of the beneficiary in connection with a trust deed release.



July 23, 1958

Honorable W. H. S. O'Brien  
Prosecuting Attorney  
Jefferson County  
Hillsboro, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"Honorable Richard King, Recorder of Deeds, Jefferson County, has asked that I request an official opinion from you concerning the following problems:

"1. What is the minimum required age for a person to sign the margin of record as assignee of the beneficiary in connection with a trust deed release?

"2. What is the minimum required age of a Deputy Recorder of Deeds?"

We will consider your second question first. In regard to it, we direct attention to Section 59.250, MoRS Cum. Supp. 1957, which reads:

"1. The recorder of deeds in counties of the third class, wherein there is a separate circuit clerk and recorder, shall keep a full, true and faithful account of all fees of every kind received. He shall make a report thereof each year to the county court.

"2. All other fees over and above the sum of four thousand seven hundred fifty dollars for each year of his official term, seven hundred fifty dollars of which shall be compensation for the performance of duties imposed by section 59.365 and four thousand dollars for other

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duties imposed by law, shall be paid into the county treasury after paying out of such fees and emoluments such amounts for deputies and assistants in his office as the county court may deem necessary." (Emphasis ours.)

Nowhere in the statutes, except as in the above, is any reference made to deputies for recorders in third-class counties, in which the office of circuit clerk and recorder are separate, as they are in Jefferson County. We assume that Jefferson County is the subject of your inquiry.

It will be noted that Section 59.250, supra, does not confer upon the recorder power to appoint deputies and assistants, but it does assume that the recorder does have such authority, i.e., "after paying out of such fees and emoluments such amounts for deputies and assistants in his office as the county court may deem necessary."

In this regard, we note the case of *Small v. Field*, 102 Mo. 104. At l.c. 118, et seq., the Missouri Supreme Court stated:

"And it is also said by the appealing defendants that no provision is anywhere to be found in those statutes for the appointment of a deputy for a territorial district court. But at common law a ministerial officer had authority to appoint a deputy. Com. Dig.--Tit. Officer (D.I.); Am. & Eng. Cyclop. of Law--Tit. Deputy, 624. Thus, a sheriff, though his patent of office does not say he may execute his office per se vel sufficientem deputatum suum, yet he may make a deputy. 7 Bac. Ab.--Tit. Offices & Officers, 316 (L.).

"The office of clerk of a court seems to be one which, from its nature and constitution, implies a power or right to execute it by deputy. Whenever nothing is required but superintendency in office a ministerial officer may make a deputy. 7 Bac. Abr. 316, 317,--Tit. Offices and Officers. \* \* \*"

Your question is as to the minimum age of the deputy referred to in Section 59.250, supra. No indication as to this matter is given in the aforesaid section.

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On June 5, 1953, this department rendered an opinion, a copy of which is enclosed, to J. B. Schnapp, Prosecuting Attorney of Madison County, in which we held that there was no minimum age requirement for a deputy county clerk in a county of the fourth class.

We believe, because of the similarity in the fact situations, that the reasoning in that opinion would apply in the case of the recorder, and that there is no minimum age requirement for a deputy in that office.

Your first question is: "What is the minimum required age for a person to sign the margin of record as assignee of the beneficiary in connection with a trust deed release." In this regard we note numbered paragraph 1 of Section 443.060, RSMo 1949, which reads:

"1. If any mortgage, cestui que trust or assignee, or administrator of the mortgagee, cestui que trust or assignee, receive full satisfaction of any mortgage or deed of trust, he shall, at the request and cost of the person making the same, acknowledge satisfaction of the mortgage or deed of trust on the margin of the record thereof, or deliver to such person a sufficient deed of release of the mortgage or deed of trust; but it shall not in any case be necessary for the trustee to join in such acknowledgment of satisfaction or in such deed of release; and provided further, that when any mortgage or deed of trust shall be satisfied by a deed of release, the recorder shall note on the margin of the record of such deed of trust the book and page where such deed of release is recorded. In case satisfaction be acknowledged by the payee or assignee, or in case a full deed of release is offered for record, the note or notes secured shall be produced and canceled in the presence of the recorder, who shall enter that fact on the margin of the record and attest the same with his official signature; and no full deed of release shall be admitted to record unless the note or notes are so produced and canceled, and that fact entered on the margin of the record and attested as above provided."

We also note Section 442.080, RSMo 1949, which reads:

"All deeds, mortgages, deeds of trust and other instruments affecting title to real estate hereafter executed by any minor shall be binding upon such minor unless he shall

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file a deed or other instrument duly acknowledged in the office of the recorder of deeds where the land is situate, disaffirming the same, within two years after the disability of the minority is removed."

In this connection, we note the case of Hamlin v. Hawkins, 61 SW2d 348, in which case the Missouri Supreme Court at l.c. 350 (3-5) stated:

"It is proposed, and must be conceded, that the initial note and its security were, under the statute relating to minors (R.S. 1919 §2218 [Mo. St. Ann. §3059]), subject to disaffirmance by the minor within two years after attaining his majority, and that upon such disaffirmance those instruments were rescinded and annulled ab initio. 31 C.J. 1019; Craig v. Van Bebber, 100 Mo. 584, 13 S.W. 906, 18 Am. St. Rep. 569. Yet, down to the time of their avoidance, the instruments were merely voidable, not void. Shipley v. Bunn, 125 Mo. 445, 28 S.W. 754; Robinson v. Allison, 192 Mo. 366, 91 S.W. 115. It inevitably follows, as contended by appellant, that the trustee's deed to Shelton was without effect upon the title to the land."

From the above, we conclude that there is no minimum age requirement for a person to take the action contemplated by your first question.

#### CONCLUSION

It is the opinion of this office that there is no minimum age requirement for a deputy recorder of deeds in a third-class county in which the office of recorder and circuit clerk are separate.

It is the further opinion of this department that there is no minimum age required for a person to sign the margin of record as the assignee of the beneficiary in connection with a trust deed release.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton  
Attorney General

HPW:ld;gm  
Encl. - Opinion to  
Hon. J. B. Schnapp