

## Opinion No. 56-6495

July 16, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Richard F. Rowley, District Attorney, Ninth Judicial District, Clovis, New Mexico

In reply to your letter of June 29, 1956, where you raise the question of whether or not minors may be Deputy County Clerks and whether or not Opinion No. 3894, dated May 29, 1926, or Opinion No. 3727, dated February 21, 1941, is correct, the following is submitted for your consideration.

Even though the office of County Clerk is an elective office and the occupant of said office subject to the provisions of Article VII, Section 2, New Mexico Constitution, the duties performed are of a ministerial nature and are granted and enumerated by statute. Historically, in deciding whether or not a minor would be allowed to occupy the position, the question has been, what are the duties? In this connection, attention is directed to 43 C.J.S., page 85, relating as follows:

"§ 24 - Eligibility to Public Office or Employment. 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 intrusted 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.**" (Emphasis supplied.)

In this respect attention is further directed to the case of *Wilson v. Newton*, 87 Mich. 493, when in a situation very similar to our own, namely an elective County Clerk, the Court laid down the following principle:

"The office of county clerk is wholly ministerial, and when the law provides that a ministerial officer may appoint a deputy, for whose acts he and his sureties are responsible, and does not limit or restrict him as to whom he appoints, he has authority to appoint whomsoever he pleases. The person appointed acts for him; or, in other words, he acts through his deputy. His choice is not confined to any race, sex, color or age."

Again in *B. S. Harkreader v. The State*, 35 Texas Criminal Reports 243, among other things, the Court held, "there being no law prescribing the qualifications of a Deputy County Clerk, a minor is eligible to receive appointment to such office."

Thus in the absence of statutory requirements for Deputy County Clerks, we conclude that a minor may be appointed a Deputy County Clerk subject to the approval of the Board of County Commissioners as provided in Section 15-43-9, N.M.S.A., 1953.

This opinion affirms and supplements Opinion No. 3894, dated May 29, 1926, and repeals and overrules Opinion No. 3727, dated February 21, 1941.

We trust this fully answers your inquiry.

By Harry E. Stowers, Jr.

Assistant Attorney General