

Opinion No. 26-3894

May 29, 1926

BY: FRED E. WILSON, Attorney General

TO: Hon. G. W. Shepherd, County Clerk, Carlsbad, New Mexico.

This Office is in receipt of your request for an opinion as to whether or not a person under the age of twenty-one years, and otherwise qualified, can legally be appointed and serve as deputy county clerk and clerk of the district court. § 2 of Article 7 of the New Mexico Constitution, as amended by Constitutional Amendment No. 1, found in the New Mexico Laws of 1921, page 468, is as follows:

"Every citizen of the United States who is a legal resident of the State and is a qualified elector therein, shall be qualified to hold any public office in the State except as otherwise provided in the Constitution. The right to hold public office in the State of New Mexico shall not be denied or abridged on account of sex, and wherever the masculine gender is used in this Constitution, in defining the qualifications for specific offices, it shall be construed to include the feminine gender. Provided, however, that the payment of public road poll tax, school poll tax or service on juries shall not be made a prerequisite to the right of a female to vote or hold office.

Some state have no statute or constitutional provision regulating the qualifications of public officers, and in those states it has been held that either women or minors may hold public office; the New Mexico Constitution, in my opinion, relates only to the public officers themselves, and does not attempt to prescribe qualifications for the deputies of such officers; neither do we have any statute in New Mexico prescribing such qualifications other than as to residence. The general law on this subject is clearly set forth in 11 C. J. 911, § 11, as follows:

"In the absence of any statutory or constitutional provision to the contrary, the office or position of deputy clerk may be held by one who is not a qualified voter, such as a minor or a woman."

It has been held under constitutional provisions similar to ours that either minors or women can hold the office of deputy county clerk. The following authorities sustain this view: *Delaney v. State*, 90 S. W. 642; *Warwick v. State*, 25 Ohio State Reports 25; *Jeffries v. Harrington*, 11 Colo. 192; *Harkreader v. State*, 60 American State Reports 40.

The duties of the office of county clerk are principally ministerial duties and such has been so held by the courts, and a minor may be qualified to perform ministerial duties the same as an adult. In such case the minor would answer for the principal, and it is in the discretion of the principal as to whether or not his deputies are competent to fill the position of deputy. Being personally acquainted with the deputy which you name in your

letter, I feel sure that the appointment would be, in all respects, in compliance with the law.