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FILE NO. S-879

OFFICERS:

Deputy Clerk of Circuit Court -
Age - Qualification

Honorable Dale A. Allison, Jr.
State's Attorney, Wabash County
One Twenty East Fourth Street
Mt. Carmel, Illinois 62863

Dear Mr. Allison:

I am in receipt of your letter wherein you state:

"Please be advised that the newly elected Circuit Clerk of Wabash County has requested that I seek your opinion concerning the hiring of a Deputy Clerk who is a person 19 year old. This person is a male.

I have reviewed some previous opinions of the Attorney General in particular, No. 46 of July 18, 1961, and #F-1073, December 13, 1963. In both of these opinions it was the opinion of the Attorney General's Office that a male under the age of 21 is not qualified to be appointed as a Deputy Clerk of the Circuit Court. Both of these opinions relied heavily upon Chapter 99,

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Paragraph 1 and Chapter 3, Paragraph 131 both of which have now been changed by amendment to reflect an 18 year old age limit.

It is my view, that a male of the age of 18 years or older can serve as Deputy Clerk of the Circuit Court. However, the Circuit Clerk has asked that I seek your opinion on that in light of the fact that two other opinions to the contrary appear. Therefore, we request your opinion as to whether or not a male of the age of 18 years or over is qualified to be appointed as a Deputy Clerk of the Circuit Court."

The office of clerk of the circuit court is created by section 4(c) of article VII of the Illinois Constitution. Neither the Illinois Constitution nor the Illinois Revised Statutes set any qualifications for the offices of circuit court clerk or deputy circuit court clerk. However, certain minimum qualifications must impliedly be met before an individual may hold either office.

The generally accepted rule is that minors are ineligible to hold offices which are judicial in nature or which require the exercise of judgment and discretion. (43 C.J.S. INFANTS, sec. 24.) Several courts have recognized that the minimum requirement for one to hold a constitutionally created public office is that the individual be qualified as an elector. (In Re Ray,

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26 N.J. Misc. 56, 56 A. 2d 761; Mitchell v. Kinney, 242 Ala. 196, 5 So. 2d 788; McLure v. McElroy, 211 So. C. 106, 44 S.E. 2d 101; Blodgett v. Clark, 177 Iowa 575, 159 N.W. 243.) Therefore, a circuit court clerk or his deputy must be legally qualified to vote in order to be qualified to hold office.

Not only must a circuit court clerk and his deputy be qualified electors, they must also have reached the age of majority. The clerk is required by statute to post a bond. (Ill. Rev. Stat. 1973, ch. 25, par. 4.) A bond being a form of contract, must be entered into by one with legal capacity. The deputy clerk, on the other hand is not required to post a bond. An analysis of several of the deputy clerk's statutory duties, however, indicates that he shall be of majority age. Section 19 of "AN ACT concerning conveyances", (Ill. Rev. Stat. 1973, ch. 30, par. 19) provides in part:

"Deeds, mortgages, conveyances, releases, powers of attorney or other writings of or relating to the sale, conveyance or other disposition of real estate or any interest therein whereby the rights of any person may be affected in law or in equity, may be acknowledged or proven before someone of the following courts or officers, namely:

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First--When acknowledged or proven within this State, before a notary public, United States commissioner, county clerk, or any court or any judge, clerk or deputy clerk of any such court. When taken before a notary public or United States commissioner, the same shall be attested by his official seal; when taken before a court or the clerk thereof, or a deputy clerk thereof, the same shall be attested by the seal of such court."

Section 1 of "AN ACT to revise the law in relation to oaths and affirmations", (Ill. Rev. Stat. 1973, ch. 101, par. 1) provides:

"All courts, and all judges and the clerk thereof, the county clerk, deputy county clerk, and notaries public, have power to administer oaths and affirmations to witnesses and others, concerning anything commenced or to be commenced, or pending before them respectively."

With the exception of a deputy circuit court clerk, it is clear that all of the officers mentioned in the above statutes must be of majority age. By analogy, a deputy clerk should have the same minimal qualifications as the other enumerated officers. Therefore, in order to qualify to serve as either a clerk of the circuit court or a deputy clerk an individual must be of both voting age and age of majority.

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The Twenty-sixth Amendment to the United States Constitution effectively lowered the voting age in Illinois to age 18. Subsequently the legislature set the age of majority for both males and females at age 18. (Ill. Rev. Stat. 1973, ch. 3, par. 131.) Therefore, I am of the opinion that a 19 year old male meets the minimum qualifications to serve as deputy circuit court clerk and may be appointed to such office.

You have mentioned in your letter two prior opinions issued by my predecessor in office. Those opinions were based upon the interpretation of statutes which have since been amended. Those opinions therefore no longer represent a correct appraisal of the law. Based upon the present state of the law, a male of the age of 18 years or over is qualified to be appointed as a deputy clerk of the circuit court.

Very truly yours,

A T T O R N E Y G E N E R A L