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May 5, 1958
Opinion No. 58-58

REQUESTED BY: Cochise County Attorney
OPINION BY: ROBERT MORRISON, The Attorney General
QUESTION: Must a resident of the State of Arizona be an elector and otherwise meet the qualifications set forth in A.R.S. § 11-402 prior to receiving a commission as a deputy sheriff?
CONCLUSION: Yes.

The Constitution of Arizona, Article 7, Section 15, provides that every person elected or appointed to any office of trust or profit under the authority of the State or any political subdivision thereof shall be a qualified elector of the political subdivision in which such person is elected or appointed. Also, A.R.S. § 11-402 requires that a county officer be a qualified elector of the county or precinct in which his duties are performed. In Stapleton v. Frohmiller, 53 Ariz. 11, 85 P.2d 49, the Court stated:

"An officer of the state of Arizona must be a qualified elector thereof, but a mere employee of the state need only be a citizen of the United States."

In view of the above, we must determine whether a deputy sheriff is a public officer of the State or an employee.

The Arizona Supreme Court has enumerated the criteria which determines whether a position is an office or a mere employment as follows:

"It will be seen from this that we held there are three elements requisite to a position being a public office, which are:
(a) the specific position must be created by law;
(b) there must be certain definite duties imposed by law on the incumbent; and
(c) they must involve the exercise of some portion of the sovereign power. . . ."

Industrial Commission v. Arizona State Highway Commission, 61 Ariz. 59, 145 P.2d 846; Stapleton v. Frohmiller, 53 Ariz. 11, 85 P.2d 49; Winsor v. Hunt, 29 Ariz. 504, 243 Pac. 407.

A.R.S. § 11-401 states that the sheriff is a county officer, and the duties of the sheriff are set out in A.R.S. § 11-441.

It is obvious from the above statutes that the office of sheriff has all three of the elements which the Arizona Supreme Court has determined to be prerequisite to a position of being a public office. Therefore, under the provisions of the Arizona Constitution and statutes above referred to, a sheriff must be a qualified elector of the county in which he performs his duties. A.R.S. § 38-462 states:

"Powers and duties of deputies

"A. Unless otherwise provided, each deputy of a state or county officer possesses the powers and may perform the duties prescribed by law for the office of the principal.

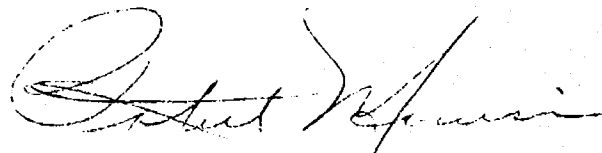
"B. When the official name of any principal officer is used in law conferring power, or imposing duties, liabilities or prohibitions, it includes the officer's deputies."

47 Am.Jur., Sheriffs, Police and Constables, states at page 826:

"§ 8. Generally.--Since sheriffs and their deputies are classed as public officers, they must, in order to hold office, possess general qualifications required of other public officers, in the absence of any special statutory or constitutional provision which fixes different qualifications." (Emphasis supplied)

It is readily seen from the above authorities that a deputy sheriff has the same duties and powers as the sheriff, and it naturally follows that he would be required to have the same qualifications as the sheriff.

Therefore, it is the opinion of this office that, under A.R.S. § 11-402, a deputy sheriff must be a qualified elector of the county in which his duties are to be performed.



ROBERT MORRISON
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