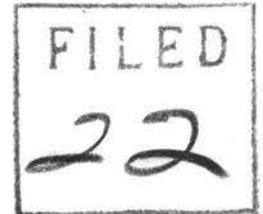


PROBATE COURT ) Clerk of Probate and Magistrate Court's must be over  
MAGISTRATES ) twenty-one years of age.

May 23, 1949



Honorable W. A. Despain  
Judge of the Probate Court  
Shannon County  
Eminence, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this Department in which you inquire as to the qualifications of the clerk of the Magistrate and Probate Court, who apparently is the clerk of both courts.

Section 17 of the Constitution of 1945, Article V, in part, provides:

"Probate courts shall be courts of record and uniform in their organization, \* \* \*"

Section 19, Laws of Missouri, 1945, page 774, in part, provides that, "Magistrate courts shall be courts of record. \* \* \*" It is, therefore, apparent from the language of the Constitution and the quoted statute that both the Probate Court and Magistrate Court are courts of record.

Section 21, Laws of Missouri, 1945, page 775, in part, provides:

"In all counties each magistrate shall by an order duly made and entered of record appoint and fix the salary of a clerk of his court and may appoint such deputies and employees as may be necessary for the proper dispatch of the business of his court and fix their salaries at such sum as in his discretion may seem proper. \* \* \* All such clerks, deputies and employees shall serve at the pleasure of the magistrate. Each clerk of the magistrate court shall take the oath required of other clerks of courts in this State. Before entering upon the duties of his office, the clerk and deputy clerk shall enter into a bond to the State of Missouri, which

May 23, 1949

good and sufficient sureties, to be approved by the magistrate, in the sum of \$1,000.00, conditioned that he will faithfully discharge all of the duties of his office; which bond shall be filed and recorded in the office of the county clerk of the county. \* \* \*"

From the above section it appears that the clerk of the Magistrate Court is appointed by the magistrate and serves at his pleasure. The section goes on to provide for the taking of the oath and supplying the required bond.

In reading your request, you seem to be particularly concerned over the fact that the clerk you now have is under the age of twenty-one years, and because of this, there is some doubt in your mind that she is qualified for the office.

Article 1 of Chapter 92 of the Revised Statutes of Missouri, 1939, generally relates to clerks of courts of record which would encompass the clerks of the Magistrate and Probate Courts in view of the fact that they are courts of record. Section 13269 of this Article, in part, provides:

"No person shall be appointed or elected clerk of any court, unless he be a citizen of the United States, above the age of twenty-one years, \* \* \*"

Consequently, in reading the above quoted section as set out, it is apparent that as a requirement or qualification for the office of clerk of the Magistrate Court or Probate Court, such person holding said office must be over twenty-one years of age, and such being the case, if the clerk of your court does not meet the age requirement as set out in the statute, she would not be qualified for the office.

As to the requirement of the bond where one person acts as the clerk of the Magistrate Court and clerk of the probate Court, I enclose a copy of an opinion previously submitted by this Department to the Judge of Probate Court of Perry County; and you will

note in reading this opinion that where one person serves as clerk of both courts that two bonds are required.

CONCLUSION.

It is therefore our opinion that regarding the qualification as to age of the person holding the office of clerk of the Magistrate Court and clerk of the Probate Court, that such person must be over twenty-one years of age.

Respectfully submitted,

APPROVED:

RICHARD F. THOMPSON  
Assistant Attorney General

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J. E. TAYLOR  
Attorney General

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