

**OPINION
46-241**

August 29, 1946 (OPINION)

VILLAGE

RE: Marshal - Deputy - Oath of Office

Your letter of August 26, 1946 relative to the appointment of a deputy marshal has been referred to me for reply.

You state in your letter that you are village marshal and wish to be advised if it is necessary for a deputy appointed by you to take the oath of office before commencing his duties.

As the functions and duties of a constable are largely ministerial, he may, in the absence of any statutory provision on the subject, act by deputy, at least for the execution of a particular duty. Where the office of deputy is still a common law office, and where there is no statute requiring an oath, an oath is not necessary. A deputy should qualify in accordance with the provisions of the constitution and statutes, but if the deputy acts as such without qualifying he may be considered a de facto officer.

Section 40-0717 of the North Dakota Revised Code of 1943 provides:

The village marshall shall be a peace office, and in executing the orders of the governing body of the village and in enforcing the by-laws and ordinances of the village shall possess the powers and be subject to the liabilities possessed by and conferred upon sheriffs by law. The marshal shall have the same general powers to serve civil process as now are possessed by county constables."

It the village marshal possesses the powers and is subject to the liabilities possessed by a sheriff it would seem to follow that section 11-1502 of the code would then apply which authorizes a sheriff, in case of emergency, to appoint and qualify special deputies. The statutes does not provide that an oath must be taken by deputies appointed by the marshal and it is my belief that special deputies appointed by the sheriff need not first be sworn before they commence their duty.

However, if there is a notary public in Dunn Center, I would suggest that a deputy subscribe to an oath substantially in the following form:

STATE OF NORTH DAKOTA)

)ss.

County of Dunn)

I _____, having been duly appointed deputy marshal of the Village of Dunn Center, do hereby swear that I will support the constitution of the United States and of the

State of North Dakota, and that I will faithfully and impartially enforce the laws of said state and the ordinances of the Village of Dunn Center.

Subscribed and sworn to before me this _____ day of
September, 1946.

Notary Public, Dunn Cou
North Dakota

My commission expires _____.

June 30, 1947

NELS G. JOHNSON

Attorney General