

OPINION
48-157

December 30, 1948 (OPINION)

OFFICERS

RE: Taking Oaths and Performing Marriages

Your letter of December 27 has been received stating that you have been appointed as Deputy County Judge and Ex Officio Clerk of the District Court of Logan County and asking if you have the right to take oaths or perform a marriage.

Under the provisions of Section 11-1011 of the North Dakota Revised Code of 1943 county judges and clerks of the District Court are authorized to appoint clerks and deputies. As the office of county judge is a judicial office, he cannot appoint a deputy for a judicial officer cannot act by deputy. He may have, however, a clerk who performs ministerial duties. The clerk of court is purely a ministerial officer and he may act by a deputy. The county judge may appoint a clerk who keeps the records of the office. However, the clerk can perform no judicial functions.

Under the law, the duties of the clerk of court in general are prescribed by Section 11-1701 of the Revised Code. Any of these duties may be performed by his deputy. A deputy should always sign papers which would ordinarily be signed by the clerk, by signing the clerk's name by himself as deputy. The signature would thus be "John Doe, Clerk of the District Court by Richard Roe, Deputy." The powers of the clerk of the county court are prescribed by Section 27-0725 of the North Dakota Revised Code of 1943. Among the powers enumerated is the power to "Administer oaths authorized or required in any proceeding in the court and certify the same under the seal of the court;". Here he would sign simply as clerk of the county court and affix the seal of the court. The county judge is authorized by Section 27-0724 to appoint a clerk.

Section 14-0309 provides for solemnizing marriages and names the persons who may solemnize. This section provides that, "Marriages may be solemnized by all judges of courts of record * * *."

Section 110 of the Constitution provides that the county court shall be a court of record. Therefore, a judge of the county court may solemnize marriages. This, however, is in the nature of a judicial function and would not authorize a deputy to solemnize the marriage.

P. O. SATHRE

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