

**Board of County Commissioners — Power to Name  
Deputies for the Assessor.**

The Board of County Commissioners has no authority to select or appoint deputies that have been allowed to a county officer. The privilege of selection and appointment rests with the officer who is allowed the deputies.

N. A. Burkey, Esq.,  
County Attorney,  
Broadus, Montana,

My dear Mr. Burkey:

I have your inquiry as to whether the Board of County Commissioners, in allowing deputies for county officers, may also determine who these deputies shall be.

Section 352 of the Revised Codes of 1907 reads as follows:

“All assistants, deputies, and other subordinate officers, whose appointments are not otherwise provided for, must be appointed by the officer or body to whom they are respectively subordinate.”

While some of the language in *Jobb v. Meagher County*, 20 Mont. 424, and *Hogan v. Cascade County*, 36 Mont. 183, might indicate that the approval of appointments of deputies allowed is required of the County Commissioners, a careful examination of those cases discloses that the approval referred to therein is as to the number of deputies and does not amount to conferring any right upon the County Commissioners to participate directly in the selection of the persons to be appointed, and that the actual decisions in those cases were only to the effect that the County Commissioners had control of the number of deputies.

In the *Jobb Case*, 20 Mont., at page 434, the following language was used:

"There is nothing therein which deprives the board of the right conferred by the law of 1893 to fix, to reduce, and, indeed, to order an increase of, the number of deputies. The validity or efficacy of the appointments depended upon the condition subsequent, to wit, the approval of the board, unless the determination of the number to be allowed preceded the appointments or was simultaneous with it."

In the *Hogan Case*, 36 Mont., at page 188, the following language was used:

"The fact that the sheriff may appoint them is not significant, for the reason that any officer who was entitled under the Code provisions to have a deputy was entitled to make his own selection (Pol. Code, sec. 4603), subject only to the approval of the board under the Act of 1893, as to the maximum limit fixed by the Code provisions."

Thus it appears that the number of deputies once having been determined by the Board, or a deputy or deputies having been allowed, the appointment lies exclusively with the officer allowed such deputies, and not with the County Commissioners.

This seems to be the view taken by this office under a previous Attorney General (Vol. 8, *Opinions Attorney General*, 107), where the following statement appears:

"If, however, the board, under the provisions of Section 3123, authorizes the county treasurer to appoint a deputy, or deputies, such appointment may be made by the county treasurer and he is not required to have the appointment approved or confirmed by the board of county commissioners. The board, in authorizing the appointment of a deputy or deputies under the provisions of Section 3123, may specify the time for which such deputy or deputies are to be appointed by the county treasurer, that is, the board may authorize the appointment of a deputy for the whole year, or for any specified length of time less than a year."

It is, therefore, my opinion that when deputies have been allowed by the County Commissioners to a county officer the selection and appointment of such deputies lie with the officer, and that the Board of County Commissioners has no authority to appoint such deputies.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.