County Commissioners—District Judges—Assistants—Appointments—Receivers.

The boards of county commissioners have no power or authority under statute to appoint an assistant to aid the district judge in the examination of accounts and reports of receivers of defunct banks filed in the court.

Board of County Commissioners, January 29, 1925.
Fort Benton, Montana.

Gentlemen:

You have submitted to this office the matter of the request of Judge Tattan to furnish an assistant to assist the judge in examining the reports of receivers of insolvent banks, which reports have been filed in court. The commissioners have granted this request and have authorized the employment of a person at a salary of $150.00 per month. Some question has been raised as to whether your board has power to do this and you wish the advice of this office as to whether the board has power to employ a person under such circumstances.

There is no authority of law for the employment of such a person. Boards of county commissioners like other officers and boards can only exercise such powers as are given them by law.

However, it has been held that a court has inherent power to employ a stenographer to typewrite his opinions and that the county is liable for such services.

In the case of Rosenthal v. Luzerne County, 12 Pa. Dist. Rep. 738, the court said:

> "This plaintiff founds her claim against the county, not as a county officer, but rather because, in the discharge of the judicial duties of a judge, he, to expedite the affairs of the court, and have the record of these opinions in convenient and legible hand, deemed it his duty to employ her."

However, the legislature has by statute made provision for all necessary conveniences in order to expedite the business of a court or judge and it is not clear in just what way the report of a receiver of a defunct bank differs from other reports or matters which the law requires the judge of the court to pass upon.

In the case of Bexar County vs. Davis, 223 S. W. 558, 560, the court, in discussing the liability for services rendered in expediting the affairs of a court, said:

> "We think, however, that from the very fact that the legislature has required application to the county judge, and imposed upon him certain duties in determining whether deputies or assistants are needed, it was not intended that he should have the authority to appoint and pay deputies or assistants out of fees collected by him. If the legislature had deemed it necessary for the county judge to have deputies or assistants, it

could have provided that the commissioners' court or the district judge should pass on the question of allowing the appointment and pay of such deputies or assistants. The incongruity of having a 'deputy county judge' or an 'assistant county judge' was so apparent that appellee was disposed to call them 'clerks' when he appointed them, rather than deputies. It is true that he called them 'clerks or assistants' in his testimony, but in his sworn account made to the county they are called plain 'clerks.' There is no authority in the law for the appointment of such clerks, no matter what they might be called, and consequently no part of the fees collected by the judge could be appropriated to their pay."

While this case is not directly in point inasmuch as the judge was authorized by statute to make appointments of deputies or clerks where application was made to him still the position in question here is not such a position as the court would have inherent power to fill by appointment.

It is, therefore, my opinion that the county commissioners are without authority to provide for the employment of such person.

Very truly yours,

L. A. FOOT,
Attorney General.