

Sheriffs—Deputies—Jailors—Board of County Commissioners.

It is within the province of the board of county commissioners to determine whether it will allow the sheriff a deputy or deputies, but it may not require the sheriff to station a deputy at a particular place in the county; neither can it require him to designate a deputy as jailor, such designation and the stationing of his deputies being a matter exclusively for the sheriff to determine.

Mr. John H. Williams,
Sheriff,
Boulder, Montana.

September 18, 1931.

My dear Mr. Williams:

You have requested my opinion regarding the number of deputies to be allowed your office.

Section 4775 R.C.M. 1921 requires the sheriff to appoint an under-sheriff and section 4875 provides that in counties of the fifth, sixth, seventh and eighth classes the sheriff may appoint one deputy and a deputy to act as jailor. This right of appointment, however, is circumscribed by chapter 82 of the laws of 1923 amending section 4874 R.C.M. 1921, which gives the board of county commissioners the power to fix and determine the number of deputies allowed to county officers, which number may be greater or less than the number mentioned in said section 4875. (See volume 11, Opinions of Attorney General, page 113.)

While the board may fix the number of deputies allowed to the sheriff, it may not designate where the deputy or deputies will be stationed or whether the deputy or any one of the deputies so allowed shall act as jailor. The sheriff is charged with performing the duties of

his office and it is within his province to determine where any deputies allowed him will be stationed, that is, at the county seat or elsewhere in his county. The county commissioners should determine the necessity of allowing the sheriff to appoint a deputy or deputies from the viewpoint of that officer rendering adequate service in the discharge of his duties throughout the county.

If the board is of the opinion that because of existing conditions in a certain locality in the county the sheriff and the under-sheriff cannot render proper official service in that locality as well as properly conducting their other duties in other localities in the county the board should allow the sheriff to appoint a deputy or deputies sufficient to enable the sheriff to properly discharge the duties of his office, taking into consideration the needed services in a given locality. A finding of the board that the sheriff and under-sheriff cannot properly render the official services needed throughout the county because of extraordinary circumstances existing in a given locality, which would require much of their time, is in effect a finding that the sheriff must have additional assistance to perform his official duties throughout the county, but whether or not the deputy or deputies allowed him to render this additional assistance should be stationed in a given locality is entirely within the discretion of the sheriff.

The question for the board to determine is not whether a deputy should be stationed in a given locality but whether or not the sheriff needs the additional assistance of a deputy or deputies to perform his duties throughout the county. The sheriff can then so arrange his force as in his opinion would give the best official service to all the localities in the county and if this requires a deputy to be stationed in a given locality he may so arrange it, but the question of whether it is necessary to have a deputy reside in a given locality in order to discharge his duties of sheriff therein is for him to determine.

It is likewise within the province of the sheriff and not of the board of county commissioners to determine whether any deputy allowed him shall act as jailor. It may be that the sheriff can so arrange his force that either he, the under-sheriff or a deputy can always be on hand to look after the jail, in which event the appointment of a deputy sheriff to act as jailor is not necessary. On the other hand, he may so arrange his work that he and the under-sheriff will do the outside work and the deputy would remain to take care of the jail when there are prisoners therein. This is optional with the sheriff. If he determines that the deputy allowed him should act as jailor, thereby releasing the sheriff and under-sheriff from remaining in attendance upon the prisoners, it follows that they would then perform the duties of the office which otherwise would be performed by the deputy while one of them remained at the jail. Whether the deputy be appointed a jailor or not involves no additional expense to the county.

In determining the necessity for allowing the sheriff to appoint a deputy or deputies the board should consider also the fact that when there are prisoners in jail either the sheriff, deputy sheriff or the under-sheriff should be present to attend to their proper care and safe keeping. Whether the sheriff and under-sheriff can do this and at the same time

adequately perform the other duties of the office of sheriff without the aid of a deputy or deputies is for the board, in its sound discretion, to determine.

Very truly yours,

L. A. FOOT,

Attorney General.