

County Commissioners, Authority of in Criminal Cases. County Attorney, Special Assistants.

County Commissioners have no authority to appoint or employ counsel to conduct or assist in the prosecution of criminal cases.

Under Sec. 4602, as amended, county commissioners may authorize the county attorney to appoint a special deputy for such period as they may determine and at a compensation not exceeding that fixed by law for deputy county attorneys.

Helena, Montana, June 11th, 1906.

Hon. Geo. E. Davis, Chairman, Board of County Commissioners, Bozeman, Montana.

Dear Sir: We are in receipt of your letter of the 6th inst., in which you request an opinion of this office upon the following question:

"Have the Board of County Commissioners the power to employ counsel to assist the County Attorney in the prosecution of persons charged with crime, when, in the judgment of the Board, it is for the best interests of the taxpayers to do so?"

In accordance with an opinion upon this question given to James E. Healy, County Attorney of Silver Bow County, on Sept. 9, 1903, you are advised that the Board of County Commissioners has no authority to appoint or employ counsel to conduct the prosecution of criminal cases, or to assist the county attorney in the trial of such cases.

However, your attention is called to Sec. 4602, as amended by the laws of 1905, page 164, which provides that, "The whole number of deputies allowed the county attorney in counties of the first and second class must not exceed one chief deputy and one deputy; and in all other counties such deputies as may be allowed by the Board of County Commissioners, not to exceed one chief deputy and one deputy."

Under this section the commissioners would have authority to authorize the county attorney to appoint a deputy for such length of time as in the opinion of the board would be necessary, and the board could fix the compensation of such deputy, provided it does not exceed the rate allowed for a chief or other deputy county attorney under Sec. 4596 of the Pol. Code.

(See *Penwell v. Board of Co. Com.*, 23 Mont. 351).

Thus, if in their opinion, it would be for the best interests of the taxpayers so to do, they could authorize the County Attorney to appoint a special deputy for a period of one month at the compensation per month allowed to chief or other deputies under Sec. 4596; or, if for less than a month, at the same rate; that is, if the appointment is for half a

month, the compensation would be one-half the monthly salary. This is the only method that we know of by which the Board could authorize the employment of an assistant for the county attorney in criminal cases, and legally pay for his services out of the county funds.

Very truly yours,

ALBERT J. GALEN,

Attorney General.