

**Classification of Counties, Deputy Treasurer Appointed Under
New Classification—Salaries, Power of Commissioners
to Revoke Order of Appointment.**

Whenever the board of county commissioners have, by order, duly designated at the September meeting in each even numbered year the classification of their county, as provided by Section 4331, Political Code, the government of the county, under the new classification, goes into effect on the first Monday of the following January. The county commissioners may allow deputies and fix the salary thereof to the number authorized by law under the new classification, whose terms as deputies may begin on the first Monday of January. A deputy for the county treasurer under the new classification may be allowed after the first Monday of January, notwithstanding the fact that the term of the old county treasurer does not expire until the first Monday of March.

Where the board of county commissioners, at a regularly organized meeting, have authorized the appointment of a deputy, it is the duty of the county clerk to issue warrants to such deputy in the manner provided by law for such time as he renders services under such appointment prior to the amending or repealing of such order by the board of county commissioners at a duly organized meeting of the board.

February 11, 1905.

Hon. A. J. Walrath, County Attorney, Bozeman, Montana.

Dear Sir:—Your letter of the 9th instant, requesting an opinion upon the following questions, at hand.

First. Was the action of the Board of County Commissioners legal in making an order allowing the County Treasurer a deputy from and after January 2, 1905, where the county had been by them duly classified and declared a fourth class county at the previous September meeting of the Board?

Second. If such action of the Board was legal, should the County Clerk issue a warrant to a deputy treasurer who had been appointed by the Treasurer, under such authority of the Board, when he has been notified by the Chairman of the Board, individually not to issue such warrant for services performed in January, 1905?

In answering the first question I find that Section 4002 of the Political Code provides that counties of the fourth class may be allowed one deputy during the entire year. Section 4328, same code, provides that counties having an assessed valuation of more than \$8,000,000 and less than \$10,000,000 are fourth class counties.

Section 4331, same code, provides that the county commissioners must at the September meeting of each even numbered year thereafter make an order designating the class of the county as determined by the assessed valuation for that year. This section further provides that such order of classification does not change the government of the county then in existence until the first Monday in January next succeeding. This last proviso clearly shows that where the classification of the county is changed at the September meeting that the same shall go into effect on the first Monday of January following.

The Board of County Commissioners, at a meeting held on January 2, 1905, called for the purpose of classification and fixing the number of deputies to the several county offices, had authority to authorize the county treasurer to appoint a deputy whose term should begin on the first Monday of January, 1905. The fact that the present Treasurer's term does not expire until the first Monday in March does not affect such appointment.

A deputy treasurer having been so appointed, at a duly organized meeting of the Board, called for that purpose, he is entitled to his warrant from that date, January 2, 1905.

It is the duty of the County Clerk to issue such warrant to him, for all services rendered prior to such time as the Board, when duly organized as provided by law, may modify or repeal such order.

The fact that the Chairman, or any or all the members of the Board, when not in regular or duly called meeting, as provided in Sections 4215 and 4216, have directed the County Clerk not to issue such warrant, has no effect upon the deputy's right to the warrant, nor upon the Clerk's duty to issue it. For all acts of members of the Board, other than at a duly organized meeting, or such as have been expressly authorized at a duly organized meeting, are void and cannot prevail over an order of the

Board, still in force, made by such Board at a duly organized meeting.

In this connection I call your attention to the case of Williams v. Board of Commissioners, Broadwater Co. 72 Pac. 755.

Yours very truly,

ALBERT J. GALEN,

Attorney General.