

**Reclassification of Counties by Legislative Assembly, Effect upon
Deputy County Officers.**

It is within the province of the legislative assembly, by reclassification of counties or otherwise, to increase, decrease or abolish deputy officers or their salaries or emoluments they not being constitutional officers. But the salary or emoluments of elective offi-

cers provided for by law cannot, under Section 31, of Article V, of the constitution, be increased or diminished during the term for which they are elected.

However, under the provisions of Section 3, of Senate Bill No. 31, amending Section 4328 of the Political Code, wherein change in the classification of counties is provided, such change in classification cannot change the government of the county now in existence until the first Monday in January, 1907.

March 11, 1905.

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

Dear Sir:—Your letter of the 6th instant received, asking for an opinion of this office as to what effect Senate Bill No. 31, changing the classification of counties, will have upon the appointment of a deputy county treasurer in your county, the new classification having changed your county from a county of the fourth class into one of the fifth, the law providing that in fourth class counties the treasurer is entitled to a deputy for the entire year, while in counties of the fifth class he is only entitled to a deputy for the months of November and December.

The general rule is that where the term of office, or the election of an officer, is not fixed by the constitution of the state, the legislature may alter it at their pleasure, or abolish the office altogether. (Thoop on Public Officers, Secs. 19 and 305; In re Bulger, 45 Cal. 553.)

Deputies are not officers, within the meaning of Article 16 of the constitution, fixing the terms and providing for the election of county officers, and are not, therefore, affected by the limitations in Section 31, of Article 5, of the constitution, regarding the extending of the term or increasing or diminishing of the salary or emoluments of officers after their election or appointment.

The supreme court of Washington, under constitutional provisions very similar to ours, has held that deputies are not officers within the meaning of the constitution requiring the legislature to provide for the election of county officers and to regulate their compensation; that the limitations imposed upon the legislature by the constitution as to the terms of office and the right to increase or diminish the compensation of officers "relate only to the officers of the county; i. e., to the persons elected to fill the offices, as distinguished from mere clerks or deputies; and that as to clerks or others, whose services may be requisite or necessary to the discharge of the business of a particular office or subject, is left, so far as the constitution is concerned, to the wisdom of the legislature untrammelled and unfettered by any restrictions or limitations." (Nelson v. Troy, 39 Pac. 975.)

It has further been held that a law increasing or decreasing the number of deputies for an officer, after the election of such officer, is not increasing or decreasing the salary or emoluments of the officer. (Reals v. Smith, 56 Pac. (Wyo.) 692.)

The constitution not having fixed the terms of or provided for the appointment of deputies for the various county officers, and the laws providing therefor having been enacted by the legislature, it has full power to abolish such deputyships, or to change the number thereof, in the various counties of the state at its pleasure. (In re Bulger, supra. People v. Van Gaskin, 5 Mont. 353.)

This being the law, the passage of Senate Bill No. 31, reducing your county from a fourth class county to one of the fifth class, abolishes the office of deputy treasurer for the entire year and only entitles the county treasurer to a deputy for the months of November and December, as provided for counties of the fifth class.

The office being thus abolished, any deputy who may have been appointed under the law making the county a fourth class county is legislated out of office, and the county commissioners have no authority to allow any compensation for a deputy since the approval of Senate Bill No. 31 on February 16, 1905.

I herewith enclose you certified copy of House Bill No. 118.

Yours very truly,

ALBERT J. GALEN,
Attorney General.

March 13, 1905.,

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

Dear Sir:—I desire to qualify opinion expressed by my office on March 11, in relation to the effect of Senate Bill No. 31, amending Section 4328 of the Political Code, approved February 16, 1905, changing the classification of counties.

My said former opinion correctly states the law had the legislature made the same go into effect immediately upon its passage and approval, but upon reference had thereto this day, I find that by Section 3 of said law it is provided that the reclassification will not be made by the several boards of county commissioners until their regular session in September, 1906, and that then the class of the county being determined the class of the county now in existence shall not be changed until the first Monday in January next succeeding. Said Section 3 reads as follows:

"The several boards of county commissioners must, at their regular session in September, 1906, make an order designating the class to which such county belongs as determined by the assessed valuation of such county for the year 1906, under the provisions of this Act, and in each even numbered year thereafter; provided that such classification shall not change the government of the county then in existence until the first Monday in January next succeeding."

You will, therefore, see that the said new law relative to county classification will not be operative so as to effect the change of government of your county until the first Monday in January, 1907.

I sincerely regret that this mistake occurred, and believe that I have rectified the same in time so that no one will suffer injury therefrom.

Yours very truly,

ALBERT J. GALEN,

Attorney General.