

Register State Land Office. Deputy Register, Acts in Name of Principal. Power of Deputy Register.

The deputy register of the State Land Office can legally act only in the name of his principal, the Register.

Helena, Montana, June 6th, 1907.

Hon. John P. Schmit,
Register State Land Office,
Helena, Montana.

Dear Sir:—

I am in receipt of your letter of the 4th inst., in which you submit for the consideration of this office, the following question:

“Can my assistant sign any document emanating from this office, in his own name, as such assistant, and would such document be in legal form, or must he sign in the name of his principal?”

It is the general, if not the universal, rule of law, that unless the statute which creates the office of deputy makes such office independent of the will of the principal officer, such deputy can act only in the name of his principal. This rule is supported by nearly all authorities.

Carter vs. Hornback, 139 Mo. 238.

Joyce vs. Joyce, 5 Cal. 449.

Reinhart vs. Lugo, 86 Cal. 398, 21 Am. State Repts. 53.

Samis vs. Wightman, 25 Fla. 558.

Robinson vs. Hall, 33 Kan. 143.

Fee vs. Railroad Co., 58 Mo. App. 96.

Ditch vs. Edwards, 26 Am. Dec. 414.

Meecham, Public Officers, Sec. 584.

The duties of the Register of the State Land Office, as prescribed by Section 3592, Political Code, makes it incumbent upon that official to “execute all contracts of sale, lease, permits, or other evidence of disposal of State lands * * *” The office of “Deputy Register” was created by the Act of February 24, 1899, Laws 1899, page 85, and was amended by Chap. XC, Laws of 1903. The amendment, however, only relates to the salary. The Act creating the office of Deputy Register provides:

“The Register of the State Land Office is hereby authorized to appoint, subject to the approval of the State Board of Land Commissioners, a deputy register, who shall, under the direction of the Register of the State Land Office, perform such duties as may properly be done by the Register.”

It will be noticed that the terms of this law do not make it

obligatory upon the Register to appoint a deputy, but it only gives him authority so to do. Hence, it rests solely within the will of the Register whether there is any such officer as "Deputy Register." And a person so appointed Deputy Register must act under the direction of the Register, and, when so acting, he may "perform such duties as may properly be done by the Register," with reference to the transaction of the business with which he is entrusted, but no authority is conferred upon the deputy to act independently of, or contrary to the will of his principal.

The rule, therefore, of Principal and Agent, applies, and a deputy may legally act only in the name of his principal. Section 980 of the Political Code does not change this universal rule of law.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.