

**Board of County Commissioners, Power to Allow County Treasurer Deputy in Fifth Class County. County of the Fifth Class, Allowed Deputy Treasurer in Discretion of Commissioners.**

The Board of County Commissioners of counties of the fifth class may allow the County Treasurer a deputy during all, or so much of the year, as in their judgment the business of the office requires, at a salary of not more than one hundred dollars per month.

Helena, Montana, May 8, 1909.

Hon. W. H. Trippet,  
County Attorney,  
Anaconda, Montana.

Dear Sir:

I am in receipt of your letter of May 5, 1909, wherein you ask my official opinion upon the following question:

Has the Board of County Commissioners power and authority to allow the County Treasurer a deputy, and if so what salary should he be paid?

It is my opinion that the Board of County Commissioners may allow the County Treasurer of Deer Lodge county, being a fifth class county, a deputy, if in their judgment the prompt and faithful discharge of the duties of the office requires it. I base this opinion upon the construction which I give to Section 3128 and 3123 of the revised codes.

Section 3128 provides that the county commissioners may allow one deputy to the Treasurer of a fifth class county during the months of November and December of each year. This section, you will observe, was approved March 3, 1905, and provides, also, that the commissioners may, under certain restrictions, allow a deputy in counties of this class to the assessor, and other officers named therein. The section does not provide a maximum salary for deputy treasurer appointed under its provisions, but does in the matter of assessor's deputy, fixing the maximum at \$100.00 per month, which, in my opinion, affords a proper criterion for fixing the deputy treasurer's salary.

Section 3123, which was approved March 9, 1907, being subsequent to the passage of Section 3128, provides that the county commissioners may, in the exercise of their discretion, allow additional deputies to county officers, placing, however, a limitation upon the amount of salary

which may be paid such deputies. As Section 3128 provides that the county commissioners may appoint a deputy treasurer in counties of the fifth class during two months of the year, it is my opinion that if, in the judgment of the county commissioners, the business of the offices requires it, they may extend the time of service of such deputy during such months of the year as in their judgment the business of the office requires, this last authority being conferred, in my judgment, by the provisions of Section 3132. However, as Section 3123 limits the salary which may be paid such deputies at not more than the maximum allowed to deputies provided by law, and as Section 3128 is the only law which provides for the appointment of a deputy treasurer in fifth class counties, and as it is silent on the matter of maximum salary to be paid such deputy, I believe we are justified in consulting that statute as to the amount of compensation allowed to other special deputies included within its provisions, and we find that in counties of the fifth class the assessor may be allowed one deputy during certain months of the year at a salary not exceeding \$100.00 per month.

I believe, therefore, the safe rule for the county commissioners to follow if they should, under the provisions of the two sections above referred to, allow the treasurer a deputy, is to fix his salary at an amount not in excess of the maximum amount provided for other deputies under Section 3128.

You are therefore advised that the county commissioners may allow the treasurer of Deer Lodge county a deputy, his salary to be fixed at an amount not exceeding \$100.00 per month.

Yours very truly,

ALBERT J. GALEN,  
Attorney General.