

**Clerk of the District Court, in Sixth Class Counties. Deputy Clerk of the District Court. Sheriff, Fees of. Fees of Sheriff.**

Section 3119 of the Revised Codes of Montana provides that in counties of the sixth class one deputy shall be allowed the clerk of the district court.

Sheriff's are allowed a fee of twenty cents per folio for making necessary copies of papers, processes, or writs, where the same

are not furnished by the party or his attorney.

Helena, Montana, February 15, 1909.

Hon. D. M. Kelly, County Attorney, Boulder, Montana.

As supplemental to my opinion, directed to you under date of February 8, 1909, and in conformity with your telephone communication of February 14, I advise you that, in my opinion, the County Commissioners have the power and authority to determine the number of deputies allowed the clerk of the district court, as well as their compensation, as Section 3119 provides the maximum number of deputies that may be allowed and the maximum salary only in so far, however, as it is limited by the provisions of Section 3123.

The cases decided by the Supreme Court of this state touching on this point were all of them construing statutes passed prior to the ones now governing, but are, nevertheless, authority in the construction of the present statute.

The case of *Jobb v. Meagher County*, 20 Mont., 424 and the case of *Penwell v. County Commissioners*, 23 Mont., 356, especially the latter case, are in point, and determine the construction to be placed upon Section 3119.

In *Penwell v. County Commissioners*, at page 357, the court uses the following language:

"We are strengthened in this opinion by a policy pervading the statutes which generally gives to the board of County Commissioners power to control the number and compensation of deputy county officials. The legislature has selected such board as best fitted to guard the economic interests of the county, doubtless recognizing that, in view of the fact that the county is to pay the deputies, a discretionary power in respect to their number and salaries might be exercised with more impartial regard to the public needs by boards of county commissioners, acting within certain bounds, than could be exercised by any other power, not excepting the legislature itself."

See also 92 Pac. 529, especially at page 531.

You are therefore advised that, in my opinion, the County Commissioners may refuse to allow the Clerk of the District Court any deputy, if in their opinion such deputy is not required for the prompt and faithful discharge of the duties of that office.

Very truly yours,

ALBERT J. GALEN,

Attorney General.