

Deputies of County Officers, Number of. Powers of County Commissioners, With Reference to Number. County Commissioners, Supervision of Over Deputies.

The board of county commissioners has authority in its sound judgment and discretion to determine the number of deputies to be allowed the respective county officers within the maximum limits prescribed by law.

January 6, 1911.

Hon. B. L. Powers,
County Attorney,
Ft. Benton, Montana.

Dear Sir:

I am in receipt of a letter dated December 21st, 1910, from your predecessor in office, Hon. F. N. Utter, in which he submits for my opinion, the following:

1. "I wish to know exactly how many deputies the various

county officials may have in third class counties to whom salaries mentioned in Session Laws of 1909, page 114, must be paid."

2. "What discretion or authority rests in the board of county commissioners regarding such number of deputies?"

3. "Does the board of county commissioners have the authority to determine whether the chief deputy assessor shall be allowed for the year in third class counties, or is such chief deputy allowed the county assessor as a matter of course without any reference to any action of the board of county commissioners?"

As to your second inquiry, as to what authority and discretion rests with the board of county commissioners regarding the number of deputies, I would respectfully call your attention to the Laws of 1893, page 61, providing as follows:

"The number of deputies and their compensation allowed to county officers within the maximum limit named within this act shall be determined by the board of county commissioners."

By the provisions of Section 5786 of the Political Code, this provision was re-enacted into the Codes of 1895 and our supreme court in a number of cases has held this law to be still in effect. I cite you below, three cases referring especially to the appointment of deputies.

Jobb v. Meagher Co., 20 Mont. 433;

Penwell v. County Commissioners, 23 Mont. 357;

Hogan v. Cascade Co., 36 Mont. 183.

In the case of Jobb vs. Meagher Co., it was pointed out by the supreme court that when the government adopted the policy of compensating public officers by fixed salaries payable by the respective counties, instead of by fees collected from the public for the performance of specific duties from time to time, the discretionary control over the number of deputies appointed by the various officers within the maximum named in the statute was lodged in the board of county commissioners. It was held further that the provisions of the act of March 9th, 1893, above quoted, declaring this policy, was not repealed by implication by any of the provisions of the Code declaring the maximum number of deputies each one might appoint.

And in the case of Penwell vs. County Commissioners, above cited, the following language appears:

"We are strengthened in this opinion by a policy pervading the statutes which generally give to the board of county commissioners power to control the number and compensation of deputy county officials. The legislature has selected such boards 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."

From the above citations it is apparent that the law undoubtedly invests the board of county commissioners with power, in their sound judgment and discretion, taking into consideration the volume of business of the respective offices within their county, to determine the number of deputies each county official is entitled to appoint, keeping, however, within the maximum provided by law. Except, as is provided by Section 3123, of the Revised Codes, the board of county commissioners may exceed this maximum when the business of the county, or the respective office therein may require additional appointments.

With reference to your third inquiry, it is my opinion, in view of the references hereinbefore made, that the board of county commissioners have authority to determine whether the chief deputy assessor shall be allowed for the year in third class counties. This power, however, as above indicated is not an arbitrary power vested in the board, but must be used with discretion and judgment, taking into consideration the needs of the county with reference to the assessor's office. This view, I believe, is further fortified by the provisions of Section 3128, Revised Codes of 1907, providing that the assessor may be allowed one chief deputy and two additional deputies in March, April, May, June, July and August of each year.

Having determined that the number of deputies may be regulated by the county commissioners, I deem an answer to your first inquiry unnecessary, further than to refer you to Sections 3128 and 3119, as amended by Session Law 1909, pages 123-167.

In this connection, however, I would respectfully call your attention to the opinion heretofore rendered by me to Hon. O. D. Gray, County Attorney of Teton County, which opinion is found in Vol. 3, Opinions of Attorney General, page 57, and is with reference to the salaries of such deputies as may be appointed and allowed.

Yours very truly,

ALBERT J. GALEN,

Attorney General.