

**Sealer of Weights & Measures, Deputy Of. Deputy Sealer of Weights and Measures, County Clerk As. County Clerk, Authority as Deputy Sealer. Deputy County Clerk, Authority Of as Deputy Sealers.**

A deputy county clerk has the authority to act for and on behalf and in the name of his principal in the discharge of the duties required of county clerks as deputy sealers of weights and measures.

The duty enjoined on county clerks as deputy sealers of weights and measures is a duty which attaches to the office of county clerk rather than to the individual who holds such office.

Sept. 9 1911.

Hon. Joseph Corby

Deputy State Sealer of Weights and Measures,  
Helena, Mont.

I am in receipt of your letter of enquiry submitting the question:

"Can a deputy clerk and recorder discharge the duties of a county clerk and recorder as defined by Chapter 34, Laws of 1911, providing that "the county clerks of each county are hereby declared to be deputy sealers of weights and measures for their respective counties?"

The general law relating to additional duties required of public officials, which were not required of them by the law creating their respective offices; that is, ex-officio duties, may be generally defined as "from office; by virtue of office; officialy a term applied to the authority derived from official character merely; not expressly conferred upon an individual, but rather are annexed to the official position, also use of an act done in an official character, or as a consequence of office, and without any other appointment or authority than that conferred by the office."

12 Am. & Eng. Enc. of Law, 391.

"From office; by virtue of the office; without any other warrant or appointment than that resulting from the holding of the particular office."

18 Cyc. 1500.

Under the provisions of Sec. 220, Revised Codes of 1907, county clerks are ex-officio county sealers of weights and measures for their respective counties, and by the provisions of Sec. 219 of said codes, they are subordinate to the state sealer of weights and measures in the discharge of this duty.

Under the law as expressed in the revised codes, it was the duty of the county clerk to inspect such weights and measures as were presented to him for that purpose.

Sec. 224, and Sec. 225, Revised Codes of 1907.

Said Chapter 34, Session Laws of 1911, is rather a continuation of

the provision of the revised codes than a repeal and enactment of a new law.

Sec. 5, Revised Codes.

New duties are added, in this: That it seems to be the duty of the deputy county sealer of weights and measures to inspect the weights and measures used within their jurisdictions without waiting for the same to be brought for inspection, and the county clerks are called "deputy sealers" instead of "ex-officio county sealers." No additional bond or oath of office is required of the county clerks before they can act as deputy sealers of weights and measures; nor does the position—in so far as it relates to county clerks—have any existence whatsoever separate from and independent of the office of county clerk. There is neither separate tenure, nor bond, nor oath of office required of such deputy sealers of weights and measures, nor are they appointed to such position except by the positive provisions of the law. It is, therefore, a duty which attaches to the office of the county clerk rather than to the individual who holds such office. Being a duty which attaches to the office, a deputy clerk may act in the name of his principal. Nor would the word "deputy" affixed to the name of such deputy county clerk constitute him a deputy of a deputy sealer; he would simply be a deputy county clerk, and the full title of his principal would be "county clerk and deputy sealer of weights and measures," and the full title of the deputy would be "deputy county clerk." Whatever questions may arise as to the creation of separate offices or the merging of separate offices, or ex-officio offices, the fact still remains that this is a duty which the law enjoins upon the county clerk.

You are, therefore, advised that a deputy county clerk may act for and on behalf and in the name of his principal in the discharge of the duties required of county clerks by the provisions of Chapter 34, Session Laws of 1911.

Very truly yours,

ALBERT J. GALEN,

Attorney General.