

Officers, Extra Compensation For. Deputy, Extra Compensation For.

The board of county commissioners has no authority to allow compensation for extra or additional work in the office of the clerk of the district court, but if the officer and his deputy are not able to transact the business of the office with dispatch, the county commissioners should allow an additional deputy at a fixed salary.

January 24, 1911.

Justin M. Smith, Esq.,
County Attorney,
Bozeman, Montana.

Dear Sir: .

I am in receipt of your letter of January 20th, 1911, wherein you submit for my official opinion the following question:

"J. A. Johnston is the present clerk of the district court of Gallatin county, elected in 1908; he requests the board of county commissioners to allow him compensation for performing what he terms "Extra and additional work in his office;" he requests the board to allow him a lump sum to be expended as he sees fit, either for extra help actually employed or to be paid to himself and his deputy for extra labor they might perform."

You further state in your letter that the clerk of the court bases his claim for this allowance upon the fact that he is entitled to two deputies at a salary of \$1,500 each per annum, that he is actually employing but one deputy and that the sum requested from the board of county commissioners is less than the yearly salary of a deputy and that the county would thus save money upon the transaction.

You ask me to advise you as to whether or not the clerk of the district court may appoint another deputy at \$1,500.00 per year, and also relative to the authority of the board of county commissioners to entertain the proposition made by the clerk of the district court. On January 6th, 1911, I addressed an opinion to B. L. Powers, Esq., county attorney, Fort Benton, Montana. This opinion was rendered with reference to deputies of county officers in third class counties, which though you do not so state in your letter, I believe is the classification of Gallatin county. In any event, as far as the questions propounded by you are concerned third and fourth class counties having but one district judge are subject to the same statutory regulations.

Regarding the employment of deputy clerks of the district court, in my opinion I held that the authority and discretion of the board of county commissioners concerning the employment of deputies is covered by the Session Laws of 1893, page 61, which law is quoted in the opinion above referred to. Three cases decided by the supreme court of the state of Montana, in the 20th, 23rd, and 36th volume of Montana Reports are also referred to. In reading Section 3119, Revised Codes, as amended by Chapter 93, Session Laws 1909, I would include

in the sentence referring to deputies of clerks of the district court in counties of the third and fourth class having but one judge, these words, "the whole number of deputies allowed the clerk of the district court 'in counties of the third and fourth class, having one district judge must not exceed' two." You are therefore advised in the light of the opinion of January 6th, 1911, that the board of county commissioners taking into consideration the amount of work to be performed in the office of the clerk of the district court and the amount of work that can be reasonably expected of the principal officer and his present deputy, may exercise their judgment and discretion in allowing him a second deputy. If such second deputy is allowed his salary must be \$1500.00, not more and not less. This is the only action, which in my opinion the board of county commissioners can reasonably take. The salary of the clerk of the court, as well as that of his deputy is fixed by statute, his duties are prescribed by law and there is no such thing as extra work, as all the work prescribed by statute is the ordinary and regular work of the clerk, and he is not required to perform any other, neither has the board of county commissioners authority to make compensation for any item of this character. If there is now such a volume of official business in the office of the clerk of the court that his present office force is not able to handle it during office hours, then under the plain provisions of the statute the county commissioners may allow an additional deputy but there is no authority in the law for allowing extra compensation to the officers now engaged in the transaction of that business.

I enclose you a copy of the opinion of January 6th, 1911, herein referred to.

Yours very truly,

ALBERT J. GALEN,

Attorney General.