

Missoula County, Deputies Of, Clerk of Court. Clerk of Court, Deputies Of. County Commissioners, Discretion to Allow Extra Deputies. Deputies, of Clerk of Court. Deputies, in First, Second and Third Class Counties, Compensation Of. Compensation, of Deputies.

Sec. 3118 Revised Codes as amended, controlling only as to compensation of deputies.

Missoula county does not come within the provisions of Section 3119 of the Revised Codes as amended by the Laws of

1909, the intent of the statute being that when the number of deputy clerks of the court shall reach four there shall be more than one judge in the county.

The maximum number of deputies allowed clerk of court in Missoula county is two, unless by reason of the volume of business the board of county commissioners see fit to allow extra deputies.

Chapter 85, laws of 1909 deals exclusively with salary and compensation of deputies.

Chapter 93 and 119, laws of 1909, deal exclusively with the number of deputies to be appointed.

Sec. 3119 as amended does not contemplate that there shall be a chief deputy in county of the third class.

February 3, 1911.

Hon. Edw. C. Mulroney,
County Attorney,
Missoula, Montana.

Dear Sir:

I am in receipt of your letter of January 30th, in which you ask the opinion of this office upon the following state of facts:

"Missoula county is a county of the third class. The judicial district of which Missoula county is a part comprises Ravalli, Sanders and Missoula counties, and has two district judges. I am in doubt as to whether the clerk of the district court of Missoula county is entitled to one chief deputy at a salary of \$1,800 per annum and one other deputy at a salary of \$1,500 per annum, or whether he is only entitled to two deputies at a salary of \$1,500 each."

Second,

"Was it the intent of the legislature as expressed in House Bill No. 202, amending Section 3118 that counties of the second and third class should have the deputies mentioned therein?"

Missoula county being a county of the third class and being embraced in a judicial district consisting of more than one county, in my opinion it does not come within the provisions of Section 3119 of the Revised Codes as amended by the Laws of 1909, wherein the clerk of the district court in a county having more than one district judge is entitled to four deputy clerks, though the fourth judicial district of which Missoula county is a part has more than one district judge, still it is apparently the intention of the legislature and clearly the intent of the statute that when the number of deputies shall reach four there shall be more than one district judge in the county. That being the case, the maximum number of deputies to be allowed the district clerk in your county would be two, unless the county commissioners in their discretion saw fit, taking into consideration the volume of business handled in the clerk of court's office to allow him extra deputies.

On January 6th, I addressed an opinion to the Honorable B. L. Powers, county attorney Chouteau county, with reference to the appointment of deputies, and also on January 24th, I addressed an opinion to the Honorable Justin M. Smith, county attorney at Bozeman, a copy of each of said opinions I herewith enclose.

It being apparent then that the clerk of the district court in your county is not entitled to more than two deputies except as above stated and in accordance with the opinions herein enclosed the appointment of even two deputies would lie within the discretion of the board of county commissioners. As to the salary to be paid these deputies, Section 3118 of the Revised Codes as amended by Chapter 85, Laws of 1909, is controlling and there is no discretion in the county commissioners to pay any greater or less amount than the amount named in that act.

It is true that the term, "chief deputy clerk district court" is used in said Chapter 85, but upon an examination of the original Section 3118 and comparing it with said Chapter 85, in addition to a general raise in the amounts to be paid the deputies therein enumerated, it will be seen that the only other change is the changing of the classification. In the original Act the deputies in first and second class counties were enumerated together and third, fourth and fifth classes together, whereas in the act of 1909 the deputies in a first class county are enumerated together and those of the second and third class together. It is apparent then that in redrafting the amendatory act in 1909 the term "chief deputy clerk district court" was carried into the classification of second and third class counties, but with no intent on the part of the legislature to extend the number of deputies to be appointed. Section 7876 of the Revised Codes, provides:

"In the construction of a statute the intention of the legislature * * * is to be pursued if possible and when a general and particular provision are inconsistent the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it."

Chapter 85, Laws of 1909, amending Section 3118 deals exclusively with the salary and compensation of deputies, but Chapters 93 and 119 of the Laws of 1909 amending Section 3119 deal exclusively with the number of deputies to be appointed. Said Chapters 93 and 119 of the Laws of 1909 would control as to the number and class of deputies appointed and Chapter 85, Laws of 1909, relating only to the salary and compensation of deputies would control as to that matter. An examination of Section 3119 as amended by said Chapters of the Laws of 1909, no reference is made to "chief deputy clerk district court" and it is therefore apparent that the "chief deputy" is not contemplated in a county of the third class. It is therefore my opinion that the clerk of the district court of Missoula county is entitled to two deputies at a salary of \$1500.00 each.

In answer to your second inquiry it is my opinion that House Bill No. 202 amending Section 3118 of the Revised Codes of 1907 is not controlling as to the number or class of deputies but it simply controlling as to the compensation to be paid such deputies when appointed

in accordance with the provisions of Section 3119 and the acts amendatory thereof.

Yours very truly,

ALBERT J. GALEN,

Attorney General.