

Sheriff of New County, Right of in Selecting Under Sheriff.
Under Sheriff of New County. Board of County Commissioners,
Allwance of Deputies by. Deputies, in New County.

The sheriff-elect of a new county may appoint as his undersheriff a person living in the territory which heretofore had embraced the new county, and is not confined to the new county proper.

There is nothing in the law compelling the Board of county commissioners to employ more deputies than necessary for the proper conduct of the business of the county.

January 22nd, 1913.

Mr. C. F. Gillette,
Hardin, Montana.

Dear Sir:

I am in receipt of your letter of the 17th inst., submitting the two questions:

"1. The sheriff-elect of the new County of Big Horn desires to appoint as under sheriff a man who resides in Billings, the county seat of Yellowstone County. Can he do this?

"2. Are the commissioners compelled to allow all deputies provided for by the code, whether there is work for them or not?"

It is undoubtedly the general policy and also the spirit of the law that county officials, both elective and appointive, should be selected from the county. This, however, in my judgment does not apply to the selection of subordinate officials in the first instance. The rule relative to the residence of such subordinate officials within the county for a certain time can hardly have application in the case of the creation of a new county, for the county itself was not in existence during such time. The County of Big Horn was created partly from territory taken from Yellowstone County, and the man whom it is now proposed to appoint was a resident of that county. Neither can it be successfully maintained that such official shall be selected from territory now embraced within the new county, for that in some cases might be impossible; for instance, if a new county were created in which no town or village had heretofore existed, it might be difficult to find a resident within such territory, and anyone qualified to act as county attorney, county physician or county surveyor, or any office requiring technical knowledge of any subject. I am therefore of the opinion that the sheriff may make selection indicated in the question.

2. There is nothing in the law compelling either the sheriff or the county commissioners to select or allow a greater number of deputies or officials than are necessary for the proper conduct of the business of the county. These questions were considered to some extent by this office in opinions which will be found reported in Opinions of the Attorney General, 1908-10, page 67, and 1910-12, page 25. You have not yet received copies of these opinions, but the three volumes, to-wit: 1906-08, 1908-10, 1910-12, will be sent you today to be retained in your office and transmitted to your successors, the same being the property of the county attorney's office.

Very truly yours,

D. M. KELLY,
Attorney General.