

County Assessor, Duties of on Mortgage Assignments. Mortgage Assignments, Duties of County Assessor. County Attorneys, Deputies in Third Class Counties. Deputies, of County Attorneys, Number of.

Where it appears that mortgages are assigned for the purpose of escaping taxation, the assessor should adopt the procedure outlined by the statute, and upon the fact being made to appear, should assess such mortgages at ten times their value as a penalty.

County attorneys in third class counties are entitled to only one deputy as a matter of right, but the number may be increased by the board of county commissioners, if the faithful and prompt discharge of the duties of the office so require.

March 13th, 1914.

Hon. F. R. Cunningham,
Clerk and Recorder,
Lewistown, Montana.

Dear Sir:

I am in receipt of your letter of the 7th instant, wherein you request an opinion upon the following propositions:

"First—It has been the practice on the part of the loan companies of this county to make an affidavit on the first Monday in March, reciting that certain mortgages appearing of record in their respective names have been assigned, but the assignments are not of record. This affidavit is, of course, for the purpose of avoiding taxation on these certain mortgages claimed to have been assigned, but which assignments are not recorded. These assignments are supposed to be to non-residents of the State of Montana. The same practice has been followed by the Lewistown Brewing Company, the latter holding certain chattel mortgages and one real estate mortgage against divers individuals. The affidavit recites that these mortgages have been assigned to one of the local banks, but there was no assignment of record.

The question is, is the board of county commissioners authorized to accept these affidavits as evidence of the assignment of the mortgages and relieve the holders from taxation?

"Second—How many deputies are allowed the county attorney in a county of the third class, and at what salary? Is he also allowed a stenographer, and if so, at what salary?"

In regard to the first of these propositions, will say that under Sec. 2498, Revised Codes of Montana, all property in this state is subject to taxation, except such as is specially exempted by the provisions of Sec. 2499. Sec. 2510 provides that the assessor must annually, between the first Monday of March and the first Monday in July, ascertain the names of all taxable inhabitants and all property in his county subject to taxation. Sec. 2511 provides that the assessor

must require from each person a statement under oath, setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control, at 12 o'clock M. on the first Monday in March. Sec. 2514 gives every assessor power to subpoena and examine any person in relation to any statement furnished to him, or which discloses property which is assessable in his county, but severely penalizes every person who refuses to furnish the required statement, or to make and subscribe the required affidavit, or to appear and testify when requested so to do by the assessor. Sec. 2541 provides that any property wilfully concealed, removed, transferred or misrepresented by the owner or agent thereof, to evade taxation, upon discovery must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the board of county commissioners. Under sections to which reference has been made, it will be readily seen that the assessor is clothed with ample power and authority to inquire into matters such as you refer to. Hence, if there is reasonable cause for believing that fictitious assignments of mortgages are made for the purpose of evading taxation, the county assessor should proceed to require the offending parties to appear before him and testify under oath in respect thereto, and if it be then discovered that such assignments are being made, the persons perpetrating the fraud should be dealt with as provided for in the sections to which I have made reference.

As to your second proposition, I will say that Sec. 3128, Revised Codes, 1907, provides for such deputies as may be allowed by the board of county commissioners, not exceeding one chief deputy, and one deputy in cases other than the first and second classes, but Sec. 3135, which provides for compensation, has been repealed by Chap. 132, Session Laws of the Twelfth Legislative Assembly. Under this law the county attorney in a county of the third class is allowed and may appoint one deputy at a fixed salary of fifteen hundred dollars per annum. Hence, it is my judgment that since the enactment of Chap. 132, *Supra*, a county attorney in a third class county may have only one deputy, as a matter of right. Under the provisions of Sec. 3123, Revised Codes, the board of county commissioners is authorized to allow a greater number of deputies than the maximum number allowed by law when in its judgment such greater number is needed for the faithful and prompt discharge of the duties of any county office, and to fix the salary of such deputy at not to exceed the maximum salary allowed for deputies as provided by law.

In an opinion under date of August 19th, 1913, addressed to Hon. H. S. McGinley, county attorney, Fort Benton, Montana, it was held that the expenses of a stenographer for doing the stenographic work connected with the office of a county attorney is a proper charge against the county, but that it is discretionary with the county commissioners to decide whether such a stenographer should be hired by the month or only as occasion demanded. A copy of the opinion is enclosed herewith. Under Sec. 3199, Revised Codes, all expenses necessarily incurred by the county attorney in criminal cases arising within the county are county charges. I am of the opinion that by

virtue of this provision the county attorney when attending to criminal matters may of his own volition, if the necessity arises, employ a stenographer to assist him at the expense of the county.

Yours very truly,

D. M. KELLY,
Attorney General.