

County Clerk, Appointment of Deputies by. Deputy, Appointment of by County Clerk. Additional Deputies, Who Appointed by.

County clerks may appoint such deputies as are allowed by law; if extra help is needed, the county commissioners have exclusive authority to determine the question, and if the orderly dispatch of business requires it, they may allow additional deputies.

April 3, 1914.

Hon. M. W. Flasted,
County Attorney,
Ekalaka, Montana.

Dear Sir:

I have your letter of the 19th ultimo, as follows:

"I wish to submit the following question for your opinion:

"What measure shall the county clerk employ when he is refused sufficient help to perform the duties of his office, and he has not sufficient resources of his own to hire help himself for the purpose of performing the duties of his office?"

I note you refer to Section 2963, Revised Codes of 1907, which gives to county officers the right to appoint as many deputies as may be necessary for the faithful and prompt discharge of the duties of an office. The power to appoint, given by this section is not significant for it amounts to nothing without the sanction of the Board of County Commissioners, for Section 3136, idem, limits the appointment of deputies by officers to the number allowed by law, and salaries are paid only upon the order of the Board of County Commissioners. By the provisions of Section 3119, as amended by Chapter 119, 11th Session Laws, the county clerk of a county of the class of Fallon is entitled as a matter of right, to only one deputy. The county commissioners, under the provisions of Section 3123, idem, may allow additional deputies if in their judgment a larger number is needed for the faithful and prompt discharge of the duties of the office. It thus appears that discretionary control over the employment of deputies other than those provided for, as a matter

of right, rests entirely with the Board of County Commissioners, and it is for them to determine whether the volume of business is such as to warrant the employment of additional help.

Jobb vs. Meagher Co. 20 Mont. 433;

Penwell vs. Co. Com. 23 Mont. 357;

Hogan vs. Cascade Co. 36 Mont. 183;

Opinions Attorney General, 1910-12, Vol. 4, p. 25; .

Idem, p. 46; idem, p. 59; idem, p. 305;

Idem, 1908-10, p. 57; idem, p. 135.

It would appear from the foregoing authorities, that in the absence of gross abuse of the power thus vested in the Board of County Commissioners, your county clerk is powerless to complain.

Yours very truly,

D. M. KELLY,

Attorney General.