

Sheriff, Right of to Appoint Deputies. Deputy Sheriffs, Number of. Bailiffs or Court Attendants, Are Deputy Sheriffs. Judges, Right to Appoint Bailiffs.

It is the duty of the sheriff to discharge all duties required to be performed by an executive officer in district courts, and this duty should be discharged either by the sheriff or one of his deputies.

No authority exists for the district judge to appoint the bailiff independent of the deputy sheriffs except in emergency cases.

February 10th, 1913.

Hon. A. H. McConnell,
County Attorney,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 8th inst., submitting the question:

"Is it the duty of the sheriff to perform the duties now attended to by the bailiffs or court attendants, appointed by the district judges of this county?"

I also acknowledge receipt of your written opinion relating to the question submitted.

I am not specifically informed as to the duties now discharged by the bailiffs or court attendants of the district court of Lewis and Clark County. However, I am not advised of any duties to be performed by court bailiffs that cannot properly be performed by the sheriff of the county or his deputies. The provisions of Sec. 3010 and of Sec. 3026 seem to impose upon the sheriff the discharge of all duties required to be performed by an executive officer in and about the district court of his county. Sec. 6293 of the Revised Codes confers authority upon courts of record to make rules and said section also prohibits any rule from being made giving "any allowance to any officer for any services." By the provisions of Sec. 6302 certain authority is conferred upon the district court, and "the court or judge thereof may direct the sheriff of the county to provide such rooms, attendants, furniture, fuel, light and stationery," etc., but the judge or the court can exercise this authority only when the county officials have failed to make suitable provisions. You will notice the word "attendants" is enumerated in this list, which the court may direct the sheriff to provide. The law (Chap. 119, Laws of 1909) fixes the maximum number of deputies which is allowed to the sheriff, and there seems to be no authority vested either in the sheriff or anyone else to increase this maximum number but that the duties incumbent upon the sheriff to furnish attendants for the district court must be within the maximum number of deputies allowed the sheriff, for by the provisions of 3010 and 3026, it is a part of the official duty of the sheriff to attend all courts except justices and police courts, etc. The authority and effect of the rules adopted by the district court have been many times considered by the supreme court of this state and the decisions thereof are found collected in the note to Sec. 6293. Reference to all of these sections and to these cases are made by you in your opinion. Rule XXXVII. of department No. 2, quoted by you in your opinion relates exclusively to the duties to be performed by the attendant, and it does not appear to have reference to the power of appointment or selection of such attendant. It is probably true that the business of the court cannot be hampered or delayed for lack of proper attendants, but under Sec. 6302 it seems that the court's orders should first be directed to the sheriff requiring him to furnish the necessary attendants. But if the sheriff for any reason fails to comply with this order promptly, the inherent power of the court could then most probably be exercised in appointing some suitable person to discharge such duties, but this would be only temporary. The authority of the court requiring some attendant to be constantly present in court, would seem to find some support in the provisions of Sec. 6272, where it is provided that

"The district court of each county, which is a judicial district by itself, has no terms, must be always open for the transaction of business," etc.,

and the court undoubtedly has the authority to require certain

duties to be performed by the deputy, who acts as the attendant of the court, but this has no reference to the power of selection, and the conclusion reached is that there is no authority vested by the statute in anyone to appoint a bailiff or court attendant in excess of the maximum number of deputies allowed to the sheriff except in emergency cases when the district court may exercise this authority and that it is within the province of the sheriff to make selection of his own deputies.

Very truly yours,

D. M. KELLY,

Attorney General.