

State Auditor, Authority of. Warrants, Authority of State Auditor. Reporter to Railroad Commission, How Paid. Public Service Commission, Auditor to, How Paid. Auditor, to Public Service Commission. Deputy State Examiner, How Paid. Clerk, to State Examiner, How Paid. State Examiner, Deputies and Clerks to, How Paid. Bureau of Child and Animal Protection, Deputies How Paid. State Dairy Commission, Clerk to, How Paid. State Parole Commissioner, Stenographer to, How Paid.

Under the laws relating to the Railroad and Public Service commission, the State Examiner, the Bureau of Child and Animal Protection, the Auditor is authorized to draw warrants for the salaries of accountants, engineers and clerks. The State Dairy and State Parole Commission are not allowed clerks and stenographers, except upon authorization of the State Board of Examiners.

April 9, 1915.

Hon. William Keating,
State Auditor,
Helena, Montana.

Dear Sir:

I am in receipt of your communication under date March 29th, asking me as to the propriety of your drawing warrants against certain appropriations by the recent legislature, there seeming to be a doubt in your mind as to whether there is any law creating the various positions for which the appropriations were made. The various offices and positions about which you are in doubt may be listed as follows: Reporter to Railroad Commission, Auditor to Public Service Commission, Engineer to Public Service Commission, Reporter to Public Service Commission, four deputy State Examiners, Clerk to State Examiner, seven deputies in Bureau of Child and Animal Protection, Clerk to State Dairy Commissioner, Stenographer to State Parole Commissioner.

An examination of the various provisions of law relating to these officers and boards, shows the following results: Sections 4367 and 4368, Revised Codes of Montana, 1907, relating to the Board of Railroad Commissioners, provides in part as follows:

"Said Board shall also have the power to appoint stenographers, inspectors, experts and other persons whenever deemed expedient or necessary by said board to the proper performance of its duties."

And Section 16 of Chapter 52 of the Session Laws of the Thirteenth Legislative Assembly, being the Act creating the Public Service Commission provides as follows:

"The Commission is authorized to employ an engineer at a salary as not to exceed \$2400 per annum, also examiners, experts, clerks, accountants or other assistants, as it may deem necessary at such rates of compensation as it may determine upon."

The reporter spoken of here is, as we understand it, a stenographer employed for the purpose of reporting the hearings of the Commission. The legislature intended apparently to charge one half of the salary of this employment to the Railroad Commission, and one half thereof to the Public Service Commission. You will note also that Chapter 52 makes specific provision for an engineer, and I think that the terms "expert," "clerk," "accountant" "or other assistants," could very well include an auditor for the Commission, auditor and accountant being very nearly synonymous terms. As to the deputies in the office of State Examiner I find that Section 51 of the new bank act, passed by the Fourteenth Legislative Assembly, after creating a state banking department, and making the State Examiner ex officio superintendent of the department, provides:

"He shall also appoint such additional number of deputies not exceeding four as he may need to discharge in a proper manner all duties imposed upon him by law * * * . Each deputy shall receive an annual salary of \$1800 and traveling expenses."

This, I think, creates the office of Deputy Examiner. Chapter 93 of the Session Laws of the Twelfth Legislative Assembly, provides that the State Examiner shall be allowed one clerk at a salary of \$1200 per year. The question as to the Bureau of Child and Animal Protection is answered by reference to Chapter 127 of the Laws of 1911, and Chapter 102 of the Laws of 1913. Chapter 127 of the Laws of 1911 amends the law so that the Secretary of the Bureau shall have the power to appoint six deputies. Chapter 102 of the Laws of 1913, authorizes the Secretary of the Bureau to appoint a special deputy Humane Officer. Senate Bill 90, passed by the recent legislature, being an act to prescribe the salary of certain appointive and deputy state officers, fixes the salary of the deputies in this department at \$1800 per year. In regard to the clerk in the office of the State Dairy Commissioner, and stenographer for the State Parole Commissioner, I find no direct provision of law creating or providing for these officers. There is a general law, however, which allows the appointment of clerks and stenographers under certain circumstances. That provision of the law is 262 of the Revised Codes of 1907, providing as follows:

"The Board of Examiners may at any time when necessary employ clerical help for any state officer or board, and no clerks must be employed by such officers or board without the authority of the Examiners, and no such clerks must be employed by the Board of Examiners except when all the duties of the office can not be performed by the officers themselves."

From a consideration of the above provisions of law, I am of the opinion that you would be justified in drawing warrants against the appropriation named in your letter for the salaries of the clerks and stenographers and other assistants in all of the departments named by you, except that of State Dairy Commissioner, and that of State Parole Commissioner. As to these latter two offices, you would not be justified in drawing warrants for salaries for clerk hire, unless the Board

of Examiners had previously authorized the employment of such help.

Yours very truly,

D. M. KELLY,

Attorney General.