

Sheriff, Right to Appoint Deputy. Deputy, Right of Sheriff to Appoint. Board of County Commissioners, Authority of to Revoke Appointment of Deputy Sheriff. County Commissioners, Power of to Revoke Appointment of Deputy Sheriff. Salary, Deputy Sheriff, Power of Board to Reduce. Compensation, Deputy Sheriff, Amount of.

The sheriff is given authority to appoint a deputy who acts as jailor, and the Board may not deprive him of that right.

The Board of County Commissioners may not increase, but may decrease salary of a deputy sheriff who acts as jailor.

December 15, 1915.

Hon. P. R. Heilly,
County Attorney,
Columbus, Montana.

Dear Sir:

I am in receipt of your letter of the 10th instant, submitting the following questions:

1. "In a sixth class county has the Board of County Commissioners the power to revoke the appointment of a deputy sheriff, regularly appointed by the sheriff under Chapter 93, Session Laws of 1909, said deputy being the only deputy appointed or serving and part of whose duties is to serve as jailor?"

2. "Can the Board of Commissioners reduce the salary of such officer? What salary is such officer entitled to and what notice, if any, is required in case the commissioners are possessed of power to revoke the appointment?"

Chapter 93 of the Laws of 1909 appears to be supplemented by Chapter 119 of the Laws of the same session, both acts amendatory of Section 3119 of the Revised Codes. The Supreme Court, however, in *State ex rel Hay v. Hindson et al.*, 40 Mont., 353, reached the conclusion that the two chapters were not in conflict, and not inconsistent. Chapter 119 deals exclusively with the number of deputies allowed the county officers therein named, and in the last clause of Section 1 of the Act, seems to confer upon the sheriff, as a matter of law, the right to appoint one deputy who shall act as jailor, at a salary not exceeding ninety dollars per month. This being a right conferred upon the sheriff by the law, it is beyond the jurisdiction of the Board of County Commissioners to deprive him of that right. This matter has been heretofore considered by this department in some of its phases, but never directly on this point.

Opinions Attorney General, Vol. 3, 1908-10, p. 67-8;
Opinions Attorney General, Vol. 4, 1910-12, pp. 25, 58, 305;
Opinions Attorney General, Vol. 5, 1912-14, p. 24.
Jobb v. Meagher Co., 20 Mont. 433;
Penwell v. Co. Com. 23 Mont. 357;
Hogan v. Cascade Co., 36 Mont. 83.

Some of these opinions of the Supreme Court were rendered prior to the enactment of Chapter 119 of the Laws of 1909.

This Chapter 119, Laws of 1909, also fixes the salary of the deputy who acts as jailor, at ninety dollars per month. This amount being fixed by law, it is also beyond the authority of the Board to increase the same, but the Board may decrease the same, as the law only names the maximum amount. Hence, I am of the opinion that under the law as it now exists, the sheriff has the right to designate a deputy who shall act as jailor, and that the county board has the authority to fix the salary at not exceeding ninety dollars per month.

Yours very truly,

J. B. POINDEXTER,

Attorney General.