

**County Surveyor, Authority to Appoint Deputy. Deputy County Surveyor, Authority to Appoint and Salary of. County Commissioners, Authority to Appoint Deputies.**

The only power conferred upon a county surveyor to appoint a deputy is that found in Section 2963.

The County Surveyor has no authority to appoint a deputy at a fixed salary, and charge the county at a per diem rate.

If the county hires an extra surveyor, it is liable for the regular compensation unless agreement is made for some other compensation.

January 13, 1916.

Hon. G. J. Jefferies,  
County Attorney,  
Roundup, Montana.

Dear Sir:

I am in receipt of your letter of the 8th instant, submitting the following questions:

"1. What are the County Surveyor's powers with reference to appointing Deputy County Surveyors?

2. Can the County Surveyor appoint a deputy at a salary of \$125 per month and charge the county for his services at the rate of \$7 per day?

3. Can the County Surveyor appoint a deputy for private and public work, at a stipulated salary, and charge the county \$7 per day for the actual time the deputy works on public matters, where it appears that such deputy also does the private work of the county surveyor?"

The provisions of Section 2963, Revised Codes, seem to be general enough to authorize a county surveyor to appoint a deputy, but without compensation "except as provided in this Code". The Code nowhere makes provision for compensation of a deputy county surveyor. Nor have I been able to find any provision in the Code conferring authority upon either the county surveyor or the Board of County Commissioners, or anyone, to appoint a deputy surveyor, except the general state-

ment contained in said Section 2963. Section 3123, Revised Codes, confers general authority upon the Board of County Commissioners to increase the number of deputies allowed to county officers in certain cases, and to fix the salary of such extra deputies but in as much as the county surveyor is not given a deputy, no compensation for the salary of a deputy is fixed, and it is doubtful whether the Board under this section has authority to create the office of deputy county surveyor. Section 3065, Revised Codes, being a part of the Chapter relating to county surveyor, confers authority upon the County Board in certain cases of disability of the regular county surveyor, "to employ another competent civil engineer, who shall be subject to the law governing the county surveyor", and the provisions of Chapter 141 of the Session Laws of 1915, in dealing with the survey and inspection of roads, etc., by the county surveyor, also confers authority upon the county board in case of disqualification of the county surveyor, to "appoint a competent engineer in his place", but no where in the law is there any direct authority given to anyone to appoint a deputy to that officer. The County Board appears to be vested with plenary power to hire another engineer or surveyor when necessary, but their contract with him is a special contract, and not by reason of his general appointment or recognition as a deputy county officer. If, therefore, the county surveyor, under authority vested by the provisions of Section 2963, did designate someone as his deputy, the County Board, would be under no obligations to hire such person so designated, but would in cases where it was necessary for the Board to hire a surveyor, be free to exercise its own discretion as to whom it would hire. Hence, when work is to be done by a surveyor, and the county surveyor does the work, he is entitled to the compensation. If he cannot do the work, then the Board may select its own surveyor, and pay the compensation allowed by law. Of course, the Board may select the one designated by the county surveyor, but his employment is an independent contract, and not as a county officer. The County Board undoubtedly has the authority when the work of the county demands it, to hire an independent surveyor, and they may contract with him to receive a less wage per month than the regular per diem of \$7, but that is a matter resting with the Board and the person employed.

The second question submitted would seem to indicate that a deputy county surveyor was now receiving a salary from the county of \$125 per month, and that in addition thereto, the county surveyor was charging the county \$7 per day for the work done by such alleged deputy. In that event the county is paying twice for the same work. If the Board contracts with some surveyor at \$125 per month, that is the only compensation to which he is entitled, and the county surveyor would not be entitled to anything by reason of work done by such surveyor.

Answering your questions specifically then:

1. The only power conferred upon county surveyors to appoint a deputy is that found in Section 2963, Revised Codes;
2. The answer is "No".

3. If the county hires the extra surveyor, or accepts work done by him under its authority, then the county is chargeable with the regular compensation, unless a definite agreement is made, but the county surveyor cannot compel the county board to hire any particular surveyor to do the work which he himself is unable to do.

Yours very truly,

J. B. POINDEXTER,

Attorney General.