

Sheriffs—Deputy Sheriffs Acting Without Pay—Fees of Such Deputies—Foreclosure Sales.

A sheriff may appoint a deputy to serve without salary or compensation from the county, and if the appointment and oath of office of such deputy is filed in the office of the Clerk and Recorder, he has authority to act as a deputy sheriff in exactly the same manner as a salaried deputy, but that the fees collected by such deputy cannot be retained by him as compensation for his services, but that the same, except mileage must be by the sheriff paid into the County Treasury.

June 21, 1917.

Mr. R. N. Hawkins,
First Assistant State Examiner,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 16th inst. submitting the following:

"In the matter where a man performs the duties of a deputy sheriff, not a resident of the county seat, gives no bonds, draws no stipulated salary, but is recognized by the sheriff as a deputy, has this so-called deputy the authority to conduct a foreclosure sale, etc., collect fees for serving summons, and hold the same for his services, and not turn the same over to the sheriff's office for credit to the county?"

"We are informed by the sheriff the idea was to save expense to the citizens of that portion of the county by having a man in their locality to act as a deputy sheriff."

While the number of sheriffs who are to receive salaries which a sheriff may appoint are limited by statute, a sheriff may appoint a deputy to serve without salary or compensation, except mileage, from the county, and such deputy sheriff may, in the name of the sheriff, conduct foreclosure sales, serve summons, etc., making his returns in the name of the sheriff by such deputy, but such appointment, together with the deputy's oath of office, must be filed in the office of the county clerk and recorder, before he is authorized to act as such.

Section 3139 provides that all fees of all salaried officers, except sheriff's mileage and board of prisoners, must be paid into the county treasury, said section being as follows:

"All salaried officers of the several counties must charge and collect for the use of their respective counties, and pay into the county treasury on the first Monday in each month, all the fees now or hereafter allowed by law, paid or chargeable in all cases except as provided in Section 7178 of the Code of Civil Procedure; Provided, however, that nothing in this section shall be held to apply to the compensation received by the sheriff as mileage while in the performance of official duties, or for the board of prisoners or other persons while in his custody."

Under this section commission and fees received by the sheriff on foreclosure sales, fees for serving summons, and all other fees which the sheriff is authorized by law to charge and collect, except his mileage and for board of prisoners and witnesses, must be by the sheriff paid into the county treasury.

A deputy rendering or performing such services is merely acting for the sheriff, and all fees collected and received by such deputy must be by the sheriff paid into the county treasurer.

You are therefore advised that a sheriff may appoint a deputy to serve without salary or compensation from the county, and if the ap-

pointment and oath of office of such deputy is filed in the office of the Clerk and Recorder, he has authority to act as a deputy sheriff in exactly the same manner as a salaried deputy, but that fees collected by such deputy cannot be retained by him as compensation for his services, but that the same except mileage must be by the sheriff paid into the county treasury.

Respectfully,

S. C. FORD,

Attorney General.