

Sheriff—Deputies—Jailors—Authority to Appoint.

Where one statute permits the sheriff to appoint two jailers, and another statute makes eight hours a day's work for a jailer, the sheriff may not appoint any more than two jailers, but the county commissioners may authorize the appointment of a third under Section 3123 of the Revised Codes, if they deem it expedient.

May 2nd, 1919.

Mr. Dwight N. Mason,
County Attorney,
Missoula, Montana.

Dear Sir:

I am in receipt of your letter of recent date submitting the following:

"Question has arisen in this county regarding Chapter 119 of the Session Laws of the Eleventh Session. This act provides that in counties of the third class the sheriff may appoint two deputies to act as jailers. Chapter 23 of the same Session Laws provides that eight hours constitutes a day's work for jailers in counties of the first, second and third classes. In the case of State ex rel. Hay Jr., vs. Hindson et al. 40 Mont. 358, it was held that a jailer in the county of the third class was entitled to the same pay as another deputy sheriff. Our question is this: Is the sheriff of a county of the third class entitled to three jailers in view of the fact that eight hours constitutes a day's work for jailers in that class county?"

Section 3119, as amended by Chapter 119 of the Session Laws of 1909, authorizes a sheriff in a third class county to appoint two deputies who shall act as jailers, while Chapter 93 of the Session Laws of 1909 provides that eight hours shall constitute a day's work for jailers in counties of the first, second and third classes, except in cases of emergency, etc.

Chapter 93, by fixing the hours of the jailers' work at "eight hours in any twenty-four" necessarily requires three jailers, if the board of the county commissioners deems it advisable to keep a jailer on duty at all hours of the twenty-four, while Chapter 119 fixes the number of deputies who may act as jailers at two. However, under the provisions of Section 3123 of the Revised Codes the board of county commissioners has the authority to increase the number of deputies if in the judgment of the board public interest demand such action, hence under this section the board may authorize the appointment of an extra jailer.

I am of the opinion that a sheriff has no authority to appoint more than two deputies to act as jailers without being authorized so to do by the board of county commissioners but that the board of county commissioners,

if it deems it necessary to keep a jailer on duty during all of the twenty-four hours, may authorize the sheriff to appoint an additional deputy to act as the third jailer.

Truly yours,

S. C. FORD,

Attorney General.