

Salaries—Deputy County Officers or Assistants—County Officials—Powers—Women—Same Salary as Men.

A county official or the county commissioners are allowed no discretion in determining the amount of salary paid to any deputy or assistant, or person performing the duties of such, whose office is created and salary fixed by law.

By virtue of Chapter 147 of the Session Laws of 1919, women must be paid the same salaries as men, when performing like services.

June 28th, 1919.

Mr. E. E. Collins, County Attorney,
Yellowstone County,
Billings, Montana.

Dear Sir:

I have your letter of the 31st ult., submitting the proposition of whether or not, under Chapter 222, Session Laws 1919, county officials may employ assistants in their particular offices at salaries less than that provided by said Act.

I have given careful consideration to the question submitted and am of the opinion that the minimum salary which anyone employed in any county office, affected by Chapter 222, Session Laws 1919, is the minimum specified in said Act. It may be true, as suggested in your letter, that there is considerable work in the office of the County Clerk which can properly be done by clerks whom it would not be good economy to pay a salary of \$1,650.00 a year. That is a question, however, which addresses itself to the legislature and not to a legal interpretation of a particular statute as it exists.

At common law only the person who was elected or appointed to a particular office was the person responsible for the proper discharge of the duties of that office. These duties he might perform and discharge through deputies. Nevertheless, the acts of these deputies were considered the acts of the officer in charge and for which acts he was, and at the present time, is responsible. Another phase of this question which presents itself is that Chapter 222 of the Session Laws of 1919 is an amendment of Section 3118 of the Code of 1917. This particular section reads "the maximum annual compensation allowed to any deputy or assistant is as follows:" The particular wording by Chapter 222 has been changed to read "the annual compensation allowed to any deputy or assistant is as follows:" It will be noted that under each division of the 1919 Act it is stated, "all other deputies, at a rate of not less than." It is generally held that several words connected by copulative conjunction, or presumed to be of the same class. (36 Cyc. 1118.) Therefore, when the words "any deputy or assistant" are used in the beginning of Section 3118 as amended, I take these words to be interchangeable, that is, deputy or assistant meaning one and the same thing. In view of the common law rule that an officer is responsible for the full and strict discharge and performance of the duties of his office, I cannot see how he could have

any one employed in his office without such an employee being considered a deputy, regardless of what the duties of such person might be so long as they are connected with the discharge of the duties of the office in which he is employed. I find nothing in our statutory provisions which would change this particular rule. I am therefore of the opinion that any person employed in a county office as a clerk, stenographer or assistant, whose work is connected with the discharge of the duties of that office, would be a deputy under the provisions of our statutory enactment, the salary of which is fixed by Chapter 222. Neither the officer in charge, nor the Board of County Commissioners, are allowed any discretion under the law in determining the amount of salary to be paid to a particular employee in a county office.

In this connection, I further wish to direct your attention to Chapter 147 of the Session Laws of 1919, which makes it unlawful for a county to employ women in any occupation or calling for salaries, wages or compensation less than that paid to men for performing like services or for the same amount or class of work or labor in the same establishment or office.

This I believe answers your question, and I am of the opinion, embodies the law governing the proposition which you have submitted.

Respectfully,

S. C. FORD,

Attorney General.