

Sheriffs, Appointment of Undersheriff—Undersheriff, Appointment of Sheriff, Appointment of Jailer, Appointment of.

The sheriff of every county regardless of its classification is required to appoint an undersheriff.

A sheriff of a sixth class county is not required to appoint a jailer and if such an appointment is made, he must obtain the approval of the county commissioners.

November 22, 1920.

Mr. Joseph C. Tope,
County Attorney,
Terry, Montana.

Dear Sir:

I have your letter of recent date asking whether or not a sheriff of a county of the sixth class is compelled by law to appoint at least one under-sheriff and one deputy who shall act as jailor.

Section 3011 Revised Codes 1907, provides that the sheriff **must**, as soon as may be after he enters upon the duties of his office, appoint some person under-sheriff to hold during the pleasure of the sheriff. This provision is mandatory and applies to sheriffs of all counties, regardless of the class of the counties, consequently a sheriff of a sixth class county must appoint an under-sheriff for such county.

Section 3119 Revised Codes, providing for the number of deputies of county officers, was amended by two separate and distinct acts, both passed by the 1909 legislature, Chapters 93 and 119, Session Laws 1909. The supreme court, in the case of *State ex rel Hay v. Hindson et al*, 40 Mont. 353, 106 Pac. 362, held that the two amendments are not in conflict and that full force and effect may be given to both. The language used in the two amendatory acts, so far as the appointment of deputies is concerned is identical, being as follows:

“The whole number of deputies allowed the Sheriff, is one Under-Sheriff, and in addition not to exceed the following number of deputies: In counties of the first and second class, six; in counties of the third and fourth class, two; in counties of the fifth, sixth, seventh and eighth class, one. The sheriff in counties of the first, second and third class may appoint two deputies; in the fourth, fifth, sixth, seventh and eighth class, one deputy, who shall act as jailor, etc.”

This section, as amended, does not require the sheriff to appoint the number of deputies therein specified, and neither does it give him the absolute right to appoint such number. Such section merely specifies the maximum number which may be appointed, with the approval of the board of county commissioners, and the approval of the board of county commissioners must be obtained before any number of deputies, other than the under-sheriff, can be appointed by the sheriff. See, *Jobb v. Meagher County*, 20 Mont. 424, 51 Pac. 1034; *Hogan v. Cascade County*, 36 Mont. 183, 92 Pac. 529.

You are therefore advised that the sheriff of a sixth class county not only is not required by law to appoint a deputy to act as jailor, but before he can make such an appointment he must secure the approval of the board of county commissioners.

Respectfully,

S. C. FORD,

Attorney General.