

Salaries—Deputy County Officers—Class of County.

In counties of third class, the County Clerk, Clerk of the District Court, Treasurer and Assessor may appoint a chief deputy, and such officer is entitled to compensation as provided by Chapter 222, Session Laws of 1919.

April 8th, 1919.

Board of County Commissioners,
Miles City, Montana.
Gentlemen:

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

"The County Attorney of Custer County has been asked his opinion as to the number of deputies and their respective salaries, and he has submitted the enclosed chart, upon which we would ask that you also give your official opinion.

Our particular reason in asking this is that for the last six or seven years, this county has been classed a Third Class County, and we have always paid for a chief deputy in the offices of the Assessor, the County Clerk and Recorder, the Clerk of the District Court and the Treasurer, and it would appear that the County Attorney now rules that within a Third Class County, there is no such thing as a chief deputy.

It would appear to us that it was the intention of the Legislators that there should be chief deputies else they would not set a salary for same.

Will you kindly advise us as to this matter at the earliest possible date, so that we may be able to pay the different deputies what is coming to them?"

NUMBER AND DESIGNATION OF DEPUTIES IN THIRD CLASS COUNTIES.

COUNTY CLERK AND RECORDER: Section 3119, Revised Codes, (Chapter 75, Session Laws of 1905) provided for the appointment of three deputies. This section was amended by Chapters 93 and 119, Session Laws of 1909, but no change was made in the number of deputies allowed. Section 4, Chapter 74, Session Laws of 1913, the electors registration act, makes it the duty of the board of county commissioners to provide the county clerk with sufficient help to enable him to properly perform the duties imposed by such act. No mention is made in Section 3119, Revised Codes as originally enacted, or as carried forward in the revision, or as amended by Chapters 93 and 119, Session Laws of 1909, of a chief deputy but merely of deputies.

CLERK OF DISTRICT COURT: Section 3119, Revised Codes, (Chapter 75, Session Laws of 1905) provided for the appointment of three deputies in counties having more than one district judge, and two deputies in counties having but one district judge. This section was amended by Chapter 93, Session Laws of 1909, but no change was made in the number of deputies allowed. Such section was again amended by Chapter 119, Session Laws of 1909, so as to provide for four deputies in counties having more than one district judge, and two deputies in counties having but one district judge. No mention is made in Section 3119, Revised Codes as originally enacted, or as carried forward in the revision, or as amended by Chapters 93 and 119, Session Laws of 1909, of a chief deputy, but merely of deputies.

COUNTY TREASURER: Section 3128, Revised Codes (Chapter 75, Session Laws of 1905) provides for the appointment of one deputy and also as many additional deputies as may be necessary during the months of November and December, no mention being made of a chief deputy.

ASSESSOR: Section 3128, Revised Codes, (Chapter 75, Session Laws of 1905) provides for the appointment of one deputy and also two additional deputies during the months of March, April, May, June, July and August, but no mention is made of a chief deputy.

Section 2123 authorizes the board of county commissioners to appoint a greater number of deputies than the maximum allowed by law when, in the judgment of the board such greater number is needed for the faithful and prompt discharge of the duties of any county office.

From the foregoing it will be seen that while provision is made for the appointment of deputies in such offices no provision is made for the appointment of a chief deputy or for the designation as chief deputy of any deputy appointed under such provisions.

SALARIES OF DEPUTIES IN THIRD CLASS COUNTIES.

COUNTY CLERK AND RECORDER: Section 3118, Revised Codes of 1907, (Sec. 4596, Pol. Code of 1895, being act approved March 19, 1895) provided that deputies should receive not to exceed \$1200.00 per annum, no provision being made for salary for a chief deputy. Section 3118 was amended by Chapter 85, Session Laws of 1909, by fixing the salaries of deputies at \$1500.00 per annum, no provision being made for salary for a chief deputy, altho provision was made for salaries for a chief deputy clerk of the district court and a chief deputy assessor. Section 3118 was again amended by Chapter 132, Session Laws of 1911 by providing a salary for a chief deputy clerk and recorder of \$1800.00 per annum and salaries for other deputies at \$1500.00 per annum.

COUNTY TREASURER: In the 1907 Revised Codes there was apparently no provision made for the salaries of deputies. As amended by Chapter 85, Session Laws of 1909, provision was made for the salary of a deputy treasurer at \$1500.00 a year. As amended by Chapter 132, Session Laws of 1911, provision was made for the salary for a chief deputy at \$1800.00, and a deputy at the same rate, this being the first time provision was made for the salary for a chief deputy. By Chapter 222, Session Laws of 1919, provision is made for the salary of a chief deputy at not less than \$1950.00 per annum, and for salaries for other deputies at not less than \$1650.00 per annum.

CLERK DISTRICT COURT: Section 3118, Revised Codes of 1907, (Section 4596, Political Code of 1895, being act approved March 19, 1895), fixed the salary of deputy clerks at \$1200.00. Section 3118, was amended by Chapter 85, Session Laws of 1909, so as to provide a salary for a chief deputy of \$1800.00 per annum and a salary for each other deputy at \$1500.00 per annum. Such section was again amended by Chapter 132, Session Laws of 1911, and as amended, provided for a salary for a chief deputy clerk of \$1800.00 per annum, and a salary for each other deputy of \$1500.00 per annum. And such section was again amended by Chapter 222, Session Laws of 1919, which provides for a salary for a chief deputy of not less than \$1950.00 per annum and a salary for each other deputy of not less than \$1800.00 per annum.

COUNTY ASSESSOR: Section 3128, Revised Codes of 1907, (Chapter 75, Session Laws of 1905) while making provision for one deputy, and also for two additional deputies during certain months and for the salaries of such additional deputies, made no provisions for the salary of the one deputy provided for, and there was, apparently, no provision whatever in the 1907 Codes for salary for such deputy. However, Section 3118 was amended by Chapter 85, Session Laws of 1909, and such amendment provided for a salary for a chief deputy of \$1800.00 per annum and salaries for other deputies at \$1500.00 per annum. Section 3118 was again amended by Chapter 132, Session Laws of 1911, but the provision contained therein with reference to salaries of a chief deputy and other deputies remained unchanged. By the amendment made to Section 3118, by Chapter 222, Session Laws of 1919, provision is made for a salary for a chief deputy of not to exceed \$1950.00 per annum and for each other deputy at not to exceed \$1650.00 per annum.

From the foregoing it will be seen that prior to 1909 no provision whatever was to be found in our statutes for a salary for a chief deputy in any office in a county of the third class; that in 1909, provision was made for a salary for a chief deputy clerk of the district court and for a salary for a chief deputy assessor; that in 1911 provision was made for a salary for a chief deputy in the offices of clerk of district court, assessor, clerk and recorder and treasurer, and that such provision was retained in our statutes when the last act with reference to salaries of deputies was enacted. Chapter 222, Session Laws of 1919. Comparing the provisions of Chapter 85, Session Laws of 1909 and the provisions of Chapter 132, Session Laws of 1911, so far as the same relate to salaries of deputies in offices of counties of the third class. It will be seen that the principal difference is that in Chapter 85, Session Laws of 1909, provision was made for a salary for a chief deputy in the offices of clerk of district court and assessor, while in Chapter 132, Session Laws of 1911, provision was made for a salary for a chief deputy in the offices of treasurer and clerk and recorder as well as in the offices of clerk of district court and assessor. This would seem to indicate that the legislature in 1911 intended to place all of these officers on an equal footing so far as a chief deputy is concerned and succeeding legislatures have approved the same as it has never been changed but has been carried forward and re-enacted in the last act relative to such subject.

While, as I have said, neither Section 3119 as originally enacted or as amended, nor Section 3128 makes any provision for the appointment of a chief deputy in any office in counties of the third class, merely providing for the appointment of deputies, still it is not to be presumed that the legislatures of 1909, 1911 and 1919 were ignorant of the provisions of said sections and acted on the belief that the county clerk, clerk of the district court, assessor and treasurer in such counties were entitled to chief deputies and, therefore, in the acts of 1909, 1911 and 1919 made provision for salaries of chief deputies, but rather it is to be presumed that such legislatures were fully aware of such provisions and intended by the provisions of the acts of 1909, 1911 and 1919 providing for salaries for chief deputies, to authorize one of the

deputies appointed by each of such officers under the provisions of Section 3119 and 3128 to be designated as a chief deputy.

I am, therefore, of the opinion that it was the intention of the legislature by the acts of 1909, 1911 and 1919, to authorize the county clerk and recorder, clerk of the district court, treasurer and assessor in counties of the third class to designate as chief deputy one of the deputies provided for by Sections 3119 and 3128, Revised Codes, as amended, and that each of such chief deputies is entitled to the salary and compensation provided for by Chapter 222, Session Laws of 1919.

Respectfully,

S. C. FORD,

Attorney General.