

Deputy County Officers—Salary of—Number of—Power of County Commissioners.

The Board of County Commissioners has the power to fix and determine the number of deputy county officers, and may, in its discretion, abolish all deputies in case the work of any office does not require the services of a deputy.

The County Commissioners may not reduce the salary of any deputy, except those allowed by Section 3128 of the Revised Codes of 1907, below the amount named in Chapter 222 of the Laws of 1919.

The County Commissioners have authority to fix the compensation of temporary deputies allowed by Section 3128 at an amount less than that named in the statute.

Board of County Commissioners,
Helena, Montana.

Gentlemen:

I have received an inquiry from you in regard to the powers of County Commissioners in connection with the number and salaries of deputy county officers, in which you refer to an opinion of the Attorney General, Volume 6, page 68, and inquire whether my opinion is in conformity with that one, and whether it is within the discretion of the County Commissioners to require county officers to employ deputies for a period of less than one year, if in their judgment the services rendered by such deputies were worth less than the minimum provided by law. You also inquire generally what the state of the law is with respect to the power of County Commissioners to control the number and salaries of deputy county officers.

Chapter 222 of the Laws of 1919 fixes the salaries of deputies or assistants of the various county offices at rates "not less than" the sums named in the Act.

Before Section 2 of Chapter 222, Laws of 1919, was amended by Chapter 204 of the Laws of 1921, it read as follows:

"The Boards of County Commissioners in the several counties of the State shall have the power to fix the compensation allowed any deputy or assistant under this Act, where any deputy or assistant is employed for a period of less than one year the compensation of such deputy or assistant shall be for the time so employed, provided, the rate of such compensation shall not in any event be to exceed the rates fixed by this act for similar deputies or assistants."

In determining the present powers of County Commissioners with reference to deputy county officers, it will be necessary to examine the history of the law on this subject.

In 1895, Section 3136 of the Revised Codes of 1907 was enacted, reading in part as follows:

“The number of deputies allowed to county officers and their compensation must not exceed the maximum limits prescribed in this chapter.”

In 1905, Section 3128 of the Revised Codes of 1907 was enacted, fixing the number of deputy county treasurers and deputy county assessors and deputy county attorneys, and authorizing the County Commissioners to allow the County Treasurer such deputies as might be necessary during the months of November and December, and to allow the County Assessor not to exceed two additional deputies for the months of March, April, May, June, July and August.

In 1907, Section 3123 of the Revised Codes of 1907 was enacted, reading as follows:

“That the Board of County Commissioners in each County is hereby authorized to allow the several county officers to appoint a greater number of deputies than the maximum number allowed by law when, in the judgment of the Board of County Commissioners, such greater number of deputies is needed for the faithful and prompt discharge of the duties of any county office, and to fix the salary of such deputies appointed in excess of the maximum allowed by law; provided, such salary shall not exceed the maximum salary of deputies provided by law.”

After Chapter 222 of the Laws of 1919 was enacted, the Supreme Court held in the case of *Modesitt v. Flathead County*, 57 Mont. 216, that the second section thereof above quoted applied only to temporary deputies, the County Commissioners having allowed five extra deputies to the County Assessor. It is to be noted that Section 3128 allowed not to exceed two additional deputies, while in the *Modesitt* Case five had been allowed, and the Supreme Court recognized the right of the County Commissioners to allow a number greater than the two additional ones permitted by the statute, which necessarily was under the provisions of Section 3123. A preliminary question, therefore, is whether Chapter 204 of the Laws of 1921, above mentioned, has the effect of repealing Section 3123 of the Revised Codes of 1907.

Section 3123, being the later enactment, had the effect of repealing Section 3136, in so far as the limitation on the number of deputies was concerned, as well as the like limitations found in Sections 3119 and 3128.

Thus, at the time of the decision of the *Modesitt* Case, Sections 3123 and 3128 were in effect, and the five deputies involved in that case were allowed by the County Commissioners under Section 3123, and their compensation was held by the court to have been rightfully fixed by the County Commissioners under Section 2 of Chapter 222, supra, at an amount less than the amount named in the statute.

With the law as above outlined, the Legislature in 1921 added to Section 2 of Chapter 222 the following:

“Said Boards of County Commissioners shall likewise have the power to fix and determine the number of all deputy county officers, provided, however, that the number of said deputies shall not be greater than the maximum fixed by law.”

The language of the proviso above quoted is clear and direct, and the conclusion follows that it was the intention of the Legislature by this provision to limit the number of deputies in any and all cases to the maximum number fixed by law, and thus to repeal Section 3123, and in my opinion Section 3123 is repealed by said Chapter 204.

By the provision just quoted the Boards of County Commissioners are given the power to fix and determine the number of deputy county officers, and this means that they may reduce the number below the number named in the statute, and in their discretion may abolish all deputies in case the work of any office does not require the services of a deputy. However, Section 3123 having been repealed, the only provision remaining in the law conferring authority on the County Commissioners to allow temporary deputies is that contained in Section 3128 allowing additional deputies to the County Treasurer and County Assessor at certain times of the year. There being no provision for temporary deputies except those last mentioned, any deputy employed in any county office will be a regular deputy with the exception provided in Section 3128, and the County Commissioners may not reduce the salary of any deputy, except those allowed by Section 3128, below the amount named in Chapter 222 of the Laws of 1919. As to the temporary deputies allowed by Section 3128, the County Commissioners have authority to fix the compensation at an amount less than that named in the statute.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.