

Appointment—Counties—County Commissioners—County Treasurer—Deputies.

The number of deputy county officers to be employed is left entirely to the discretion of the Board of County Commissioners.

Where the County Commissioners of a sixth class county refuse to authorize the appointment of a Deputy County Treasurer the appointment of one by the County Treasurer is not legal and such deputy cannot enforce his claim for compensation against the county.

Stuart McHaffie, Esq.,
County Attorney,
Ryegate, Montana.

My dear Mr. McHaffie:

You have submitted to this office for my opinion the question whether the County Treasurer can appoint a deputy, and, if so, whether the deputy's claim for services is a valid charge against the county, when the County Commissioners refuse to allow a deputy.

Section 4880, Revised Codes of 1921, provides, in part, as follows:

"The whole number of deputies allowed the County Treasurer must not exceed in counties of the first class, two; in counties of the second, third and fourth classes, one; in counties of the fifth, sixth, seventh and eighth classes, no deputies must be allowed; provided, that the Board of County Commissioners may allow such deputies as may be necessary during the months of November and December of each year." * * *

While Section 4874, Revised Codes of 1921, as amended by Chapter 82, Laws of 1923, provides:

"Said Boards of County Commissioners shall likewise have the power to fix and determine the number of deputy county officers and allow to several county officers a greater or less number of deputies or assistants than the maximum number allowed by law, when in the judgment of the Board of County Commissioners such greater or less number of deputies is or is not needed for the faithful and prompt discharge of the duties of any county office."

Under this section of the statute the question of the number of deputies to be employed is left entirely to the discretion of the Board of County Commissioners and, should they refuse to authorize the employment of a deputy for the County Treasurer of a sixth class county, a deputy appointed by him would not be entitled to receive any compensation because he would not be legally appointed.

It is, therefore, my opinion that the County Treasurer of a sixth class county may not appoint a deputy without the authorization of the Board of County Commissioners.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.