

Counties—County Officers—Deputies.

It is illegal for one county officer to act as deputy for another where the salary of the officer acting as such deputy is \$75 per month or more, even though such officer acts as deputy without compensation.

Jos. C. Tope, Esq.,
County Attorney,
Terry, Montana.

My dear Mr. Tope:

You have asked whether under the provisions of Section 412, R. C. M. 1921, the County Clerk and Recorder and the Clerk of Court of Prairie county may each appoint the other as his deputy to serve without salary.

The section referred to reads as follows:

“No county officer must be appointed or act as the deputy of another officer of the same county, except in cases where the pay of the officer so appointed amounts to a sum less than seventy-five dollars per month.”

It is apparent from the language of the foregoing statute that the legislative intent in enacting it was to absolutely prohibit any county officer, who receives a salary of \$75.00 per month or over, from acting as the deputy of any other county officer under any circumstances. The wording used is not, in my opinion, susceptible of any other construction.

California has a statute identical with ours, with the exception that the Legislature of that state made provision for the condition presented in your letter by adding the words “unless he acts and serves without compensation as such deputy.”

However unfortunate it may be from the standpoint of economy and the good of the service, our Legislature saw fit to make no such exception. The conclusion which must follow is that the exchange by the Clerk of Court and the County Clerk and Recorder of services as deputy, even though rendered without additional compensation, is illegal.

Very truly yours,

L. A. FOOT,
Attorney General.