

County Commissioners—Deputies—Clerks—Superintendents.

The Board of County Commissioners has control over the appointment of a clerk or deputy for any county officer.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

My dear Miss Trumper:

You have submitted to me the question of whether the County Commissioners have the right to deny a County Superintendent of Schools the services of a clerk where there are more than fifty teachers in third-class districts in the county.

Section 975, R. C. M. 1921, provides as follows:

"The County Superintendent of counties having fifty or more teachers in third-class districts is authorized to appoint one clerk, and the County Superintendent of counties having fewer than fifty teachers in third-class districts may, with the permission of the County Commissioners, appoint a clerk at a salary to be fixed by the Board of County Commissioners.

"The County Commissioners of counties having not fewer than seventy-five public school teachers in districts of the third class shall appoint one deputy, other than the clerk, for every seventy-five teachers in such districts from a list furnished by the County Superintendent. Such deputy shall hold a Montana certificate not less in value than a professional grade certificate, and shall be paid a salary of one hundred twenty-five dollars per month and actual traveling expenses."

In the letter which you submit with your inquiry it appears that there are more than fifty-two teachers in third-class districts within the county at the present time. From the provisions of Section 975, above quoted, the County Superintendent is authorized to appoint a clerk, apparently without the consent of the Board of County Commissioners, where there are fifty or more teachers in third-class districts. The provisions of this section have, however, been modified or changed by Section 4875, as amended by Chapter 82 of the Laws of 1923, which provides as follows:

“Said Boards of County Commissioners shall likewise have the power to fix and determine the number of deputy county officers and allow the several county officers a greater or less number of deputies or assistants than the maximum now 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.”

It is very evident that the intent of this Act was to place the control of the number of deputies and assistants entirely within the hands of the Board of County Commissioners, and, as it is a later provision than Section 975, it modifies the provisions of Section 975 in this regard.

It is, therefore, my opinion that the appointment of a clerk or deputy by a County Superintendent of Schools in a third class district having more than fifty teachers is entirely within the control of the Board of County Commissioners.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.