District Courts—Probation Officers—Appointment—Expenses—Salaries.

The district court has no power to appoint a probation officer for a single county in a judicial district. Chief probation officer and probation officers may only be appointed for a judicial district. Their appointment is discretionary. The expenses of the chief probation officer and probation officers which are incurred in connection with performing their work in a particular county are chargeable to that county. Their salaries are to be paid by all the counties in proportion to their assessed valuations. They may only be appointed in pursuance of competitive examinations.

Hon. G. J. Jeffries, September 25, 1931.
Roundup, Montana.

My dear Judge Jeffries:

I have your letter. County Attorney Huppe wrote this office stating that you had appointed a probation officer for Musselshell county and

that no district probation officer had been appointed nor had the appointment of the probation officer been made in pursuance of an examination by three examiners required to be appointed by the court under section 12288 R.C.M. 1921, and asked my opinion concerning the legality of the appointment. I wrote Mr. Huppe that in my opinion the appointment of the probation officer under such circumstances was invalid.

The original act relating to the appointment of probation officers was section 14 of chapter 122, laws of 1911. That act required the appointment, in counties having a population of 40,000 or more, of a chief probation officer, and his salary was to be paid by the county treasurer. The judge of the court was authorized to appoint not to exceed two other persons to serve as probation officers and to be paid by the county treasurer "as above set forth," meaning the manner in which the chief probation officer was paid. In counties of less than 40,000 population the judge could appoint one person to act as probation officer, his salary to be paid by the county treasurer. Upon the appointment of a probation officer it was the duty of the clerk to notify all the courts and magistrates in the county of the appointment.

From the above it will be seen that a chief probation officer was required to be appointed in counties having a population of 40,000 or more, and it was discretionary with the judge as to the appointment of the additional probation officers for the county. In counties of less than 40,000 population no chief probation officer was to be appointed but the court could, if it saw fit to do so, appoint a probation officer for the county. It will also be seen that the jurisdiction for which the chief probation officer or the probation officers were appointed was the county and not the judicial district and in both instances their salaries were paid by the county treasurer of the county for which they were appointed. As the appointment of a chief probation officer in counties having a population of 40,000 or more was mandatory it would seem to follow that whether or not there was need for the additional probation officers would depend upon whether or not the chief probation officer was able to render the services contemplated by the statute without additional aid.

The law was subsequently amended by chapter 52 of the laws of 1915, by which amendment a chief probation officer could be appointed by the judge of the district court "in every judicial district of the State of Montana," and which officer when appointed, "shall be known as the chief probation officer of such district." When the judicial district consisted of but one county his salary and expenses were to be paid by that county, but if the district consisted of more than one county only the expenses incurred in a particular county were required to be paid by that county but the salary of the officer was to be apportioned among each of the counties in the district according to the assessed valuation of the counties. It was further provided that "in every judicial district" the judge could appoint not to exceed two other persons to serve as probation officers whose salary was to be paid by the county treasurer "as above set forth."

By the amendment it is my opinion that the policy of the law relating to the appointment of a chief probation officer and of probation

officers was changed in the following respects:

1. The territorial jurisdiction for which they were to be appointed was changed from the county to all the counties comprising a judicial district.

2. When appointed they were officers for all the counties in the district—not for a single county in the district, unless a single county comprised a judicial district in itself.

3. The power to appoint a probation officer for a single county which, with others, comprised a judicial district, was annulled.

4. The appointment of a chief probation officer was made permissive instead of mandatory.

5. If appointed, the chief probation officer was such for all the counties of the district, thus permitting the services of such an officer in all the counties regardless of their population.

6. The appointment of all probation officers was to be predicated upon the necessity of having other persons appointed to assist the chief probation officer in performing the duties prescribed by law as was the case only in counties having a population of 40,000 or more under the law before its amendment. Under the old law only in counties of 40,000 or less population could a probation officer be appointed to serve independent of a chief probation officer, and this for the reason that no chief probation officer was allowed to be appointed in such counties.

7. Only the expenses of the chief probation officer and probation officers incurred in connection with performing their duties in a particular county was chargeable to that county, whereas formerly the county was chargeable with the expenses and the whole of the salaries.

8. Their salaries were to be paid by all the counties in the district in proportion to their assessed valuations (unless a single county comprised a district), instead of by a single county as formerly provided by the law before its amendment.

9. The phrase "as above set forth" as used in the provision relating to the manner of payment of the salary of the probation officer, and appearing in both the old and new laws, referred to the method prescribed for the payment of the salary of the chief probation officer and adopted it as the method of paying the salary of the probation officer. Before amendment the phrase meant that the probation officer's salary was to be paid by the county, as it was required to pay the salary of the chief probation officer. After amendment the phrase meant that the probation officer's salary would be paid proportionately by all the counties of the district (unless a single county comprised a district) for that was the method providing for the payment of the chief probation officer's salary by the amendment.

The provision for notifying the courts and magistrates of the county was retained in the new act in the language of the old which provided for the appointment of county probation officers. Apparently the legislature overlooked changing this provision to meet the new situation resulting from the enlargement of the territorial jurisdiction for which the officers were appointed by virtue of the amendment.

The law was amended by chapter 202, laws of 1919, but the provisions under consideration were not disturbed in any material respect.

The law was further amended by section 1 of chapter 251, laws of 1921, which is the present law upon the subject. The only material change with reference to the subject under consideration was that "all appointments of probation officers" should be made upon a determination of merit by a public competitive examination held by three examiners to be appointed by the court. The examiners are required to examine all applicants and certify to the court "for appointment to each position" the names of the three highest from which the appointment shall be made.

It is my opinion that the examination must precede the appointment of both the chief probation officer and the probation officers as the provision specifically states that it applies to all appointments of probation officers and the examiners must certify the names of the three persons passing the examination with the highest grades for appointment to each position. If the provision for examination only applied to the chief probation officer there would be but one position to fill by appointment. The law evidently recognized that the court might exercise its privilege of appointing not only a chief probation officer but probation officers also, thereby creating more than one position to be filled and in such a case the examinations were to be held for all of the positions which the court might deem it necessary to fill.

For the above reasons I advised Mr. Huppe that, in my opinion, the appointment was invalid, basing my conclusion upon my interpretation of the law as above set forth, though I did not detail to him my interpretation of the history and provisions of the law as fully as I have set forth above.

Very truly yours,

L. A. FOOT,

Attorney General.