

Question 1. Is a county treasurer in a county of the seventh class entitled to a deputy?

This question may properly be modified as follows: Who has the right to authorize the employment of a deputy by such treasurer? The statutes which control this matter are the following:

In reference to deputy treasurers,

“ . . . 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.”
R. C. 4880.

“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.” R. C. 4878.

“ . . . 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.” R. C. 4874 as amended by Chap. 82, Laws of 1923.

Under the provisions quoted, the law appears clear that the authority to authorize the appointment of a deputy treasurer is vested in the county commissioners and does not exist in the treasurer without the approval of the county commissioners. This view is sustained by other opinions of attorneys general. (Reports and official opinions of Attorney General, Vol. 10, p. 173; Vol. 14, p. 173; Vol. 11, p. 113; Vol. 10, p. 43; and Vol. 9, p. 365.)

Opinion No. 260

County Treasurer—Deputies—Appointment of—Salaries—County Commissioners.

HELD: (1) The authority to authorize the appointment of a deputy county treasurer is vested in the county commissioners and does not exist in the treasurer without the approval of the county commissioners.

(2) The salary of a regular deputy whose appointment is authorized by the county commissioners is \$137.50 per month.

Quaere: What is minimum salary of extra or temporary deputies?

June 5, 1933.

You ask for an opinion as to the right of a county treasurer in a county of the seventh class to employ a deputy, and as to the salary such deputy shall receive. In order to answer this question, it is necessary to reconcile certain statutes which appear to be conflicting. This matter has been covered by certain prior opinions of attorney general, and those opinions also are somewhat conflicting, or appear to be indefinite and do not definitely answer the question you ask.

Question 2. What salary shall be paid to a deputy treasurer in a county of the seventh class?

Section 4878 heretofore quoted, provides that the board of county commissioners may fix the salary of such deputies appointed for a number in excess of the maximum allowed by law, provided such salary shall not exceed the maximum salary of deputies provided by law. Section 4874 as amended by Chapter 82 of the Laws of 1923 also contains the following provision:

"That the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant under this Act; provided, the salary of no deputy or assistant shall be more than eighty per cent of the salary of the officer under whom such deputy or assistant is serving, unless otherwise provided by law; 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 be in excess of the rates now provided for by law for similar deputies or assistants;"

If we look back to the Revised Codes of 1907, we find that Section 3128 therein is identical with our present Section 4880, and Section 3123 therein is identical with our present Section 4878. Section 3118 of that code has been amended and is now, as amended, 4873 of our present code. Such Section 3118 did not fix the said salaries of a deputy treasurer in a county of the seventh class. This section was amended in 1909 and also in 1911. In neither of these amendments was the salary of such deputy treasurer fixed. In the year 1919 the law was again amended to read as it now does, and this law now reads in part as follows:

"The annual compensation allowed to any deputy or assistant is as follows: 'Counties of the sixth and seventh classes: Each deputy treasurer and deputy assessor or assistant assessor allowed by law at a rate of not less than \$1650'."

The law at the time this amendment was enacted did not provide for regular deputies for assessors, the provision for deputies being the same as in our present statute, 4880. It must be presumed

that the legislature intended this amendment to affect some deputies. Who the deputies are "allowed by law" which were to be affected by this appointment it is difficult to ascertain. Was it intended to apply to temporary deputies which the commissioners might permit under the statute which is our present Section 4880, or to extra deputies allowed under what is our present Section 4878, or was it intended to apply to permanent deputies where they are allowed to assessors by county commissioners?

In the year 1920 our present Section 4880 was in effect. That statute did not expressly authorize a permanent deputy assessor in a county of the fourth or fifth class. In that year, in the case of *Modesitt v. Flathead County*, 57 Mont. 216, the Supreme Court of this state rendered a decision holding that the salary of extra or temporary assessors was in the discretion of the county commissioners. Construing the amendment which now is our Section 4873, same being Section 1 of said amendment, Mr. Chief Justice Brantly uses the following language:

"Section 1 has reference to deputies who are appointed by the several assessors in counties of the fourth or fifth classes for services during the term. It fixes this at the annual minimum rate of \$1650, which is equivalent to a monthly minimum rate of \$137.50. Section 2 has reference only to deputies who may be appointed for temporary service during the busy months of the year."

In the case of *Farrell v. Yellowstone County*, 68 Mont. 315, an extra deputy employed prior to January 1, 1922, by the county clerk had been receiving \$137.50 per month. In December, 1929, the salary of this extra deputy was reduced to \$125 per month. Yellowstone County was then a county of the third class. Section 4873 R. C. provided: "The annual compensation allowed to any deputy or assistant is as follows: Each deputy clerk and recorder at a rate of not less than \$1650." R. C. 4878 was then in force. The decision of the Supreme Court is in part as follows: "Since plaintiff's salary was fixed at a monthly rate, her appointment or employment is presumed to have been from month to month (Sec. 7795), and could have been terminated at the end of any

monthly period. Hence, it was not a permanent, but only a temporary employment."

It has been held by prior attorneys general that county commissioners may authorize permanent deputies for county officers, which would include county treasurers in counties of the sixth and seventh classes, and that the salaries of such officers are \$137.50 per month. With this conclusion we agree. (Opinions of Attorney General, Vol. 12, p. 273; Vol. 14, p. 17.)

Many county attorneys in other counties have advised the commissioners that they may allow deputies to treasurers not in the nature of permanent or regular deputies, but who may continue in office from month to month, and that in doing so, the commissioners may fix the salaries of such deputies.

We are not prepared to say that the county attorneys so advising their commissioners have erred. The entire matter is very confusing and could only be definitely settled by decision of the Supreme Court of this state on the particular question, or by the enactment by the legislature of a complete and definite statute or statutes on this question which would leave no doubt as to the intent of the legislature.