

Opinion No. 37**County Commissioners—Sheriffs—
Dances—Mileage.**

HELD: The board of county commissioners has no power to employ anyone to attend dances and pay the claim of such appointee out of the sheriff's fund. A sheriff has no authority to go, or to send a deputy, at the expense of the county to a dance, or to any other meeting, unless he has reasonable grounds to believe that there would be a breach of the peace or some serious disorder arising out of such meeting.

January 23, 1933.

You ask an opinion of this office on the following questions "1. May the board of county commissioners employ a man to attend and supervise dances ostensibly as deputy sheriff and pay for his services out of the sheriff's budget? 2. May the sheriff decline to attend dances when requested to do so for the purpose of maintaining order?"

Section 4731, R. C. M., 1921, places appointment of deputies entirely under the control of the particular county of-

ficer to the exclusion of the board of county commissioners.

Section 4874, R. C. M., 1921, as amended by Chapter 82, Laws of 1923, places in the hands of the board of county commissioners the power to fix the number of deputies that any county officer may have, and to provide the compensation for such deputy or deputies.

Attorney General Rankin, in the Official Opinions of the Attorney General, Volume 10, on page 62, rendered an opinion to the County Attorney of Granite County, in which he used the following language:

"The board of county commissioners has no power or authority to appoint a deputy or deputies to any county officer. * * * The board simply fixes the number of deputies which the several county officers may appoint, and fixes their salaries, and each county officer may then appoint as his deputies such persons as he desires, and the board of county commissioners has nothing whatever to do with naming such deputies."

It is the opinion of this office that Attorney General Rankin's opinion rendered on this subject is in harmony with the statute. As a logical conclusion, it is the opinion of this office that the board of county commissioners has no power to employ anyone to attend dances and pay the claim of such appointee out of the sheriff's fund.

If and when the sheriff is requested to attend, or deputize some other person as a deputy sheriff to attend dances for the purpose of keeping order and the parties who make the request, or anyone else acting for them who might be conducting or be in charge of such dance, will pay the compensation and expenses of such deputy, one may be appointed but such an appointment could not be made and paid out of the county funds unless provision was first made by the board of county commissioners for the appointment of such an officer and the fixing of his compensation and then the appointment could be made by the sheriff.

While it is the duty of the sheriff to preserve the peace in his county, he has no authority to go at the expense of the county, nor to send a dep-

uty at the expense of the county to a dance, or to any other meeting, unless he has reasonable grounds to believe that there would be a breach of the peace or some serious disorder arising out of such meeting. The law generally assumes that a sheriff will be called into action when there is an actual disturbance or breach of the peace and to say that he must anticipate and be on hand at any and all places where there might be a disturbance, would be placing a construction upon the statutes that we do not believe was intended.