Opinion No. 30.

Sheriffs — Appointment of Under-Sheriff—Statutes, Construction of.

HELD: 1. In counties of the seventh and eighth classes, it is not mandatory that sheriffs appoint under-sheriffs, but they still retain the right to do so.

2. Where two acts of the legislature deal with the same subject effect must be given to both, if possible.

January 24, 1935.

Mr. Robert H. Allen
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You have requested my opinion as to whether the sheriff of a seventh class county, is entitled to an under-sheriff.

Section 4775, amended by Chapter 24, Laws of 1933, reads as follows: "Section 1. * * * Section 4775. The Sheriff, as soon as may be after he enters upon the duties of his office, must, except in counties of the seventh and eighth classes, appoint some person Under-Sheriff to hold during the pleasure of the Sheriff. Such Under-Sheriff has the same powers and duties as a Deputy Sheriff."

Section 4873 fixes the annual compensation of the under-sheriff of a county of the seventh class at a rate not less than $1,800. Section 4875 provides: "* * * The whole number of deputies allowed the sheriff is one under-sheriff, and in addition not to exceed the following number of deputies: In counties of the first and second classes, six; in counties of the third and fourth classes, two; in counties of the fifth, sixth, seventh and eighth classes, one. The sheriff in counties of the first, second and third classes may appoint two deputies, and in the fourth, fifth, sixth, seventh and eighth classes, one deputy who shall act as jailer and receive the same salary as other deputy sheriffs."

Reading these sections together, it is my opinion that the duty of the sheriff to appoint an under-sheriff "as soon as may be after he enters upon the duties of his office," in counties of the seventh and eighth classes as provided by Section 4775, as amended, is not mandatory but is optional and that under Section 4875, which has not been expressly amended, the sheriff still retains the discretion of appointing an under-sheriff, should he find it necessary to do so.

Section 4775, as amended, and Section 4875 are not necessarily in conflict or repugnant to each other. This construction is in line with the general rules of construction. In 59 C. J. 918, Section 519, the rule is stated: "One of two affirmative statutes on the same subject matter does not repeal the other if both can stand. The court will, if possible, give effect to all statutes covering, in whole or in part, the same subject matter where they are not absolutely irreconcilable and no purpose of repeal is clearly shown or indicated."

Our Supreme Court has likewise said in State ex rel. Wynne v. Quinn, 40 Mont. 472, 107 Pac. 506: "Repeals by implication are not favored. Where two Acts of the legislature deal with the same subject, effect must be given to both, if possible." See also 59 C. J. 904, Section 508, et seq.