

Opinion No. 116

**Counties — County Commissioners —
Offices and Officers—Deputies, Ex-
tra—Clerks—Stenographers, Number
and Compensation of.**

HELD: 1. County Commissioners may permit appointment of extra deputies in any office in excess of the number allowed by law, when in their judgment the duties of the office require it.

2. Compensation of extra deputies may be fixed by the Board at any sum, not to exceed the amount fixed by statute for regular deputies.

3. The Board may also permit employment of such clerical and stenographic help as it deems necessary to properly carry on the business of the county, and fix the compensation therefor.

August 10, 1939.

Mr. Harold K. Anderson
County Attorney
Helena, Montana

Dear Sir:

You have asked "as to the effect of Chapter 97, Laws 1939 on the number of deputies allowed in the offices of the county treasurer, auditor, assessor and attorney."

Chapter 97, Laws, 1939, amended Section 4880, R. C. M., 1935. An examination of Chapter 97 reveals the purpose of the amendment. The only change made is in the number of deputies allowed county treasurers. Section 4880 prior to the amendment allowed the county treasurer in counties of the first class two deputies, in counties of the second, third and fourth class, one deputy and no deputies in counties of the fifth, sixth, seventh and

eighth classes. This was changed by Chapter 97 to allow the county treasurers of counties of all classes below the first one deputy. The effect of this amendment was discussed in Opinion No. 34, Volume 18, Opinions of the Attorney General where it was held that the county treasurer, auditor, assessor and attorney were, "as a matter of right and without first obtaining the permission of the board of county commissioners" entitled to employ the number of deputies designated for the particular class of county in which the officer in question served.

Except for the change in number of deputies allowed county treasurers in counties of the fifth, sixth and seventh class the section was left exactly as it appeared in the Revised Codes, 1935. However, in order to make the change the section had to be published in its entirety. (Article V, Section 25, Constitution of Montana.) This is a rule of legislative procedure and our statutes have laid down a rule of interpretation that governs this situation.

"Where a section or a part of a statute is amended, it is not to be considered as having been repealed and re-enacted in the amended form, but portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment." (Section 93, R. C. M., 1935. See *Snidow v. Montana Home for the Aged*, 88 Mont. 337; *Continental Supply Co. v. Abell*, 95 Mont. 148; *State ex rel. Hay v. Hudson*, 40 Mont. 353.) Since 1905 when it was first enacted Section 4880 has been the law of this state in the form in which it appears in the R. C. M., 1935. During that time it has been construed by the Montana Supreme Court in *Hogan v. Cascade County*, 36 Mont. 183, and *State v. Crouch*, 70 Mont. 551. Every attorney general has had occasion to interpret this section in controversies arising out of various counties as to the number of deputies allowed. Seldom has there been such unanimity of opinion as is shown in the construction of this section and its relation to other sections of the Code. It has been uniformly held that the board of county commissioners may permit the appointment of

deputies in excess of the number allowed by Section 4880 when in their judgment the duties of the office and the prompt and faithful discharge of the office require it. (See Opinions of Attorney General, Vol. 1, p. 286; Vol. 2, p. 254; Vol. 3, p. 102; Vol. 4, pp. 25, 58, 305; Vol. 5, pp. 488, 522, 542; Vol. 6, p. 68; Vol. 7, pp. 37, 131; Vol. 8, pp. 191, 107; Vol. 9, p. 365; Vol. 10, p. 173; Vol. 11, p. 113; Vol. 12, p. 137; Vol. 15, p. 180.)

These Attorney Generals' Opinions and Supreme Court decisions are based upon Section 4878, R. C. M., 1935, which modifies Section 4880, R. C. M., 1935, by permitting "the board of county commissioners in each county * * * to allow the several county officers to appoint a greater number of deputies than the maximum number allowed by laws 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 on Section 4874, R. C. M., 1935, which declares " * * * 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 officials 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 of 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." The only way in which the amendment to Section 4880 by Chapter 97, Laws, 1939, could have changed the law in respect to the power of the board of county commissioners to increase the number of deputies over and above the maximum allowed by law would be by an implied repeal of Sections 4874 and 4878. Chapter 97 contains the customary repealing clause in Section 2, "All acts and parts of acts in conflict herewith are hereby repealed." The effect of such a repealing clause is discussed in a number of Montana cases. Probably the best discussion is found in *Barden v. Wells*, 14 Mont. 462. There the court pointed out that such a general repealing clause repeals only "what the legislature declares should be repealed and

no more; i. e., such prior statutes as were found inconsistent with the latter, which is clearly and conveniently ascertainable by comparison." (p. 465) "All laws are presumed to be passed with deliberation and with a full knowledge of all existing ones on the subject, it is but reasonable to conclude that the legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable." (Sutherland, *Statutory Construction* as cited in *Jobb v. County of Meagher*, 20 Mont. 424, 433.)

Applying these general rules I am of the opinion that the enactment of Chapter 97, Laws, 1939, only operated to make the change in the number of deputies for county treasurers in lower class counties above mentioned and did not alter the previous law authorizing the board of county commissioners to allow additional deputies when need was shown. As a matter of fact, many county offices throughout the state would be seriously handicapped in the public work they perform if the number of deputies were cut to that allowed by Section 4880. Following the previous opinions of the supreme court and the attorney general cited they have adopted a policy of employing additional deputies. The result of disturbing this practice would be to upset and handicap public service throughout the state. As was well said in *Penwell v. County Commissioners*, 23 Mont. 351, 357, "We are strengthened in this opinion by a policy pervading the statutes which generally give to the board of county commissioners power to control the number and compensation of deputy county officials. The legislature has selected such boards as best fitted to guard the economic interests of the county, doubtless recognizing that, in view of the fact that the county is to pay the deputies, a discretionary power in respect to their number and salaries might be exercised with more impartial regard to the public needs by boards of county commissioners, acting within certain bounds, than could be exercised by any other power, not excepting the legislature itself."

Then the legislature has declared that as a matter of law the various

county offices enumerated in Section 4880, R. C. M., 1935, as amended, are entitled to the designated number of deputies but it has also recognized the need to readjust the maximum number allowed to meet actual conditions in the counties and has authorized the boards of county commissioners to increase the allowed number of deputies as conditions warrant.

You have also asked what compensation should be paid to deputies?

Section 4873, R. C. M., 1935, enumerates the compensation to be paid to regular deputies. So that deputy assessors, treasurers, auditors and attorneys allowed by law are to be paid as provided by that section. (See *Op. Atty. Gen.*, Vol. 15, p. 301; Vol. 17, pp. 17, 73.) All extra deputies over and above the maximum allowed by law have their compensation fixed by the board of county commissioners at any rate deemed proper provided that the salary does not exceed the maximum salary of deputies provided by law. (Section 4878, R. C. M., 1935; *Farrel v. Yellowstone County*, 68 Mont. 313.)

Your final question was whether these sections applied to clerical and stenographic help.

The board of county commissioners has the power to authorize the employment of such additional clerical and stenographic help as necessary to carry on the business of the office and the provisions of Chapter 372, Volume 2, Political Code are not applicable.