

March 22, 1939.

Mr. Seth G. Manning  
 County Attorney  
 Wibaux, Montana

Dear Sir:

You have asked "as to the right of a county treasurer in a county of the seventh class to employ a deputy without the approval of the county commissioners."

House Bill No. 195 of the 1939 legislative session, Chapter 97, Laws of 1939, entitled: "An Act Relating to Maximum Number of Deputy Treasurers, Assessors, Auditors, and County Attorneys," amended Section 4880, Revised Codes of Montana, 1935, in respect to the authority of county treasurers to employ deputies. Section 4880 before the amendment read in part:

"The whole number of deputies allowed the county treasurer must not exceed in counties of the first class, two; in counties of the second, third, and fourth classes, one; 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."

This meant that as a matter of right a county treasurer in a first class county could employ two deputies; in a second, third, or fourth class county, could employ one deputy.

By House Bill No. 195, the above quoted portion of Section 4880 has been changed to read:

"The whole number of deputies allowed the county treasurer must not exceed in counties of the first class, two; in counties of all other classes, one; provided, that the board of county commissioners may allow such additional deputies as may be necessary during the months of November and December of each year." Clearly, the legislative intent was to

extend to the county treasurers of all counties the privilege of employing one deputy as a matter of right and without first obtaining the permission of the county commissioners. The deputy provided for by Section 4880, as

#### Opinion No. 34.

#### Counties—Officers—Deputies— County Treasurers—County Commissioners.

HELD: 1. House Bill No. 195 of the 26th Legislative Assembly gives the county treasurer the right to employ enumerated deputies without first obtaining permission of the Board of County Commissioners.

2. The salary of deputies allowed by Section 4880, R. C. M., 1935, is fixed by Section 4873, R. C. M., 1935.

3. Section 4874, Revised Codes of Montana, 1935, has reference only to deputies appointed for temporary or emergency service.

amended, is a deputy "allowed by law" and his compensation is fixed by Section 4873, Revised Codes of Montana, 1935.

Section 4874, Revised Codes of Montana, 1935, relating to the number and salaries of deputies and assistants provides:

"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 80% of the salary of officers 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 and provided the rate of such compensation shall not be in excess of rates now provided by law for similar deputies or assistants. Said boards of county commissioners shall likewise have the power to fix and determine the number of deputy county officers and allow to the 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 of such greater or lesser number of deputies is or is not needed for the faithful and prompt discharge of the duties of any county office."

This section could at first glance appear to conflict with Section 4880 which we have previously discussed.

In construing these two statutes, the cardinal rule of statutory construction must be observed and the legislative intent followed, (Section 10520, R. C. M., 1935), but it is our duty to make every effort to reconcile conflicting statutes to make both operative if possible, (State v. Williams, 106 Mont. 516; State v. Larson, 106 Mont. 525). Where it is possible to reconcile conflicting provisions, the act passed at a later date is controlling over the former. (State v. Quinn, 40 Mont. 472.) However, in the instant case, Sections 4880 and 4874 are not so irreconcilably repugnant that they cannot be given force and effect. In *Modesitt v. Flathead County*, 57 Mont. 216, the court

held that the board of county commissioners could not alter the compensation of regular deputies of county officers fixed by the section that is now 4873, Revised Codes of Montana, 1935, but could fix the rate of compensation of temporary deputies. In *State v. Crouch*, 70 Mont. 551, the question was as to the right of a county attorney to appoint a deputy county attorney who was to serve without compensation. It was contended that a deputy could be appointed only upon authority of the county commissioners. The court said, "Counsel's argument is wholly without merit, as appears plain from a most casual reading of the statutes. The right of the principal to appoint deputies is not restricted by either Sections 4880 or 4874 of the Revised Codes. They relate alone to the payment of compensation to deputies appointed." *Farrell v. Yellowstone County*, 68 Mont. 313, at 315, lays down the rule that Section 4874 has reference only to deputies who may be appointed for temporary service.

It is my opinion that by virtue of the 1939 amendment to Section 4880 the county treasurer of any county in Montana is given the right to employ one permanent deputy, when he deems it necessary to carry out the duties of his office, without first obtaining permission of the county commissioners; and the salary of such permanent deputy is fixed by Section 4873; and that Sections 4874 and 4878 must be read together as authorizing the boards of county commissioners to allow extra deputies for temporary services, or in emergencies, and fixing their compensation; and that the provisions of Sections 4874 and 4880 are not in conflict.