

No. 159

**COUNTY COMMISSIONERS—DEPUTY SHERIFFS—
HIDE INSPECTORS**

Held: The board of county commissioners of a county has no power or authority to enter into an agreement with butchers, meat peddlers and/or packers whereby the latter would reimburse the former a specified portion, or any portion whatsoever, of the fees collected by a deputy sheriff appointed under the provisions of Section 2 of Chapter 78, Laws of 1941.

July 3, 1941.

Mr. John D. Stafford
County Attorney
Cascade County
Great Falls, Montana

Attention: Mr. R. J. Nelson, Deputy

Dear Mr. Nelson:

In your letter of recent date, you submitted the following problem to this office:

“Under the provisions of Chapter 78 of the 1941 Session Laws, Section 3298.19, Revised Codes of Montana, 1935, was amended making it the duty of the sheriff or his deputy to inspect and mark animal hides. The sheriff’s office of Cascade County now has the maximum number of deputies allowed by law (Sec. 4875, Revised Codes of Montana, 1935), but is unable to promptly and efficiently care for and handle the duties provided for by Chapter 78, 1941 Session Laws.

“There is no doubt but what the County Commissioners under the provisions of Section 4878, Revised Codes of Montana, 1935, may employ an additional deputy under the circumstances. But the sheriff and the commissioners wish to know whether or not the county could enter into an agreement with the Butchers and Packers of Cascade County, whereby the Butchers and Packers would reimburse the county a specified portion of the wages to be paid to the additional deputy. The Butchers are willing and want to pay a part of the wages if an additional deputy is appointed. Payment could not be made directly to the deputy as it would probably raise a question as to the deputy being an employe of the Butchers which is prohibited by the Act.”

Section 3298.18, as amended by the provisions of Chapter 78, Laws of 1941, among other things, reads as follows:

“Section 2. In localities where there is no sheriff or deputy sheriff, and where there is need for the inspection herein required, a deputy sheriff shall be appointed, and shall be authorized by the board of county commissioners of the county to make such inspections, and he shall be paid from the appropriate county fund therefor, a fee of not to exceed twenty-five cents (25¢) for each beef hide inspected, and a fee of not to exceed ten cents (10¢) for each veal hide inspected. Such deputy sheriff shall have the same powers and authority, and shall perform the same duties as the sheriff. Except as in this Section provided, no fee shall be charged or paid for such inspection. No butcher, meat peddler, or employee of any butcher or meat peddler shall be appointed such deputy sheriff.”

Thus it can be seen the deputy sheriff appointed to make inspections under the provisions of said Section 2 is entitled to a fee of twenty-five cents (25¢) for each beef hide inspected and a fee of not to exceed ten cents (10¢) for each veal hide inspected—such fee to be paid by the county from appropriate county funds. **Except as in said Section 2 provided, no fee shall be charged or paid for such inspection.** No butcher, meat peddler, or employee of any butcher or meat peddler shall be appointed such deputy sheriff.

Otherwise than as cited in said Section 2, the hiring of deputy sheriffs is governed by the provisions of Sections 4873, 4874, 4875 and 4878, Revised Codes of Montana, 1935.

Therefore, it is my opinion the board of county commissioners of a county has no power or authority to enter into an agreement with the butchers, meat peddlers and/or packers, whereby the latter would reimburse the former a specified portion, or any portion whatsoever, of the fees collected by a deputy sheriff appointed under the provisions of Section 2 of Chapter 78, Laws of 1941.

I appreciate the imposition placed upon the sheriff and his deputies by the enactment of said Section 2, but until the legislature sees fit to change the law, this office is powerless to intervene.

Sincerely yours,

JOHN W. BONNER
Attorney General