

No. 220

**COUNTY OFFICER, illness of—VACATION WITH PAY—
REASONABLE ABSENCE FROM OFFICE—COUNTY
COMMISSIONERS—CLERK OF COURT, Deputy**

Held: Where Clerk of District Court in seventh class county has no deputy, becomes ill and requires hospitalization or treatment, he should be allowed reasonable vacation with pay for such treatment. A deputy should be appointed for such period as provided in Section 4874, Revised Codes of Montana, 1935.

August 23, 1941.

Mr. Fred C. Gabriel
County Attorney
Phillips County
Malta, Montana

Dear Mr. Gabriel:

You have submitted the following:

"In a seventh class county, the Clerk of Court has not appointed a deputy. On account of illness, the Clerk may be absent from his office. Must a deputy be appointed? May the Clerk of Court be paid his salary during his temporary absence from his office?"

Section 4875, Revised Codes of Montana, 1935, gives the number of deputies allowed and therein is found the following:

"The whole number of deputies allowed the clerk of the district court in counties of the fifth, sixth, seventh and eighth classes, one."

Chapter 168 of the Laws of 1941 provides that, in seventh class counties having less than 2,000 population, no appointment of such deputy shall be made unless authorized by the board of county commissioners. However, this Chapter has no application to Phillips County, as I understand the population thereof is approximately 8,000.

Section 4874, Revised Codes of Montana, 1935, provides the Board of County Commissioners shall have the power to fix the compensation of the deputy, and—where less than a year—the compensation of such deputy shall be for the time so employed.

The office of Clerk of the District Court is one of the most important offices in the county, and must be kept open for the transaction of the public's business.

When the Clerk is incapacitated, a deputy should be appointed. No doubt the Clerk and the Board may work this matter out amicably and to the best interests of the county.

It is true there is no express provision in the law for an elective officer to take a vacation for the benefit of his health. Neither is there any prohibition against this practice. Yet in an elective office like that of Clerk of the District Court, the salary of which is fixed by law, and which salary the Board of County Commissioners has no jurisdiction to decrease or increase, the Clerk should be permitted to take a reasonable vacation for the benefit of his health at a time when the work in the office will permit it. This has been the custom in most counties, municipalities and state for many years. The Federal Government requires such vacation leave with pay for all its employees and most all industry has now fallen into line, the theory being the employee will return to his work in better spirit and health, with renewed vigor, to accomplish more and better work, this being of great benefit to the employer. (Official Opinions of the Attorney General, Volume 15, page 278, No. 398.)

It is therefore my opinion it appears only humane to permit a county officer a reasonable vacation for his health and treatment for illness.

Sincerely yours,

JOHN W. BONNER
Attorney General