

No. 229

COUNTY OFFICERS—VACATIONS—COUNTY COMMISSIONERS—DEPUTIES

Held: Although an elective county officer, having no deputy, may take such vacation as he sees fit, subject to any penalties that might be imposed for absence from his office, the matter of naming and paying a deputy to perform the duties of the office while he is absent must be handled with the cooperation of the board of county commissioners.

September 2, 1941.

Mr. Edison W. Kent
County Attorney
Granite County
Philipsburg, Montana

Dear Mr. Kent:

You have asked this office whether a clerk of the district court who has no full-time deputy may take a vacation as a matter of right. Your question arises from the language used in Attorney General's Opinion No. 398 of Volume 15 of the Official Opinions of the Attorney General, where it is stated public officers whose offices are determined by law and whose salaries are fixed by law may take a reasonable vacation "at a time when the work in the office will permit it with no additional cost or loss to the county."

Official Opinion No. 220, Volume 19, Report and Official Opinions of the Attorney General, discusses somewhat the same question as you have

submitted except there the illness of the Clerk of Court was under consideration. A copy of that opinion is enclosed.

Under Section 4875 of the Revised Codes of Montana, 1935, a clerk of court is entitled to appoint one deputy at least, unless the county be one of the seventh class with a population of less than two thousand. (Chapter 168 of the Laws of 1941.) But, notwithstanding the provisions of Section 4875, the appointment and compensation of deputies are finally vested in the board of county commissioners by reason of the paramount authority given the board under Section 4874 of the Revised Codes of Montana, 1935. Whether or not a vacation may be taken by an elective officer without interfering with the work of his office is, in my opinion, solely for the determination of the officer involved. Whether deputies may be appointed and compensated rests, in the final analysis, with the board of county commissioners under the provision of Section 4874 since it has been held that by that section, as amended in 1923, the board of county commissioners is given the power to fix and determine the number of deputies and "may reduce the number below the number named in the statute and in its discretion may abolish all deputies in case the work of any office does not require the services of a deputy." (Official Opinions of the Attorney General, Vol. II, page 113, 114.)

It is, therefore, my opinion that although an elective county officer having no deputy may take such vacation as he sees fit, subject to any penalties that might be imposed for absence from his office, the matter of naming and paying a deputy to perform the duties of his office while he is absent must be handled with the cooperation of the board of county commissioners.

Sincerely yours,

JOHN W. BONNER
Attorney General