

in all probability, will be done in the evening. In no way would the work that 'B' does for 'A' interfere with the duties and work in 'B's' office. Could 'B' draw a warrant from Glacier County for clerical services to 'A', said services being rendered outside of regular office hours?"

In answering your question we should first consider the provisions of Section 412, Revised Codes of Montana, 1935:

"No county officer, under salary, must be appointed or act as deputy of another officer of the same county except in cases where the officer so appointed agrees to act and serve as such deputy without additional compensation."

The foregoing section is confined to the appointment of a deputy and does not preclude the appointment of an assistant to do clerical work.

In 43 Am. Jur. 218, the text states:

"Among the principal aides to public officers are deputies and assistants. The two are by no means the same or equivalent, and the two words are not legally synonymous. An assistant is one who aids, helps, or assists, while a deputy is a person appointed to act for another, a substitute or delegate who acts officially for his principal."

It is apparent that Section 412 would not preclude "B" from doing clerical work as he would not act for "A", sign any documents for "A" and would not be an agent acting for his principal, but would be a servant. "B" would not be a deputy within the above definition.

If the work "B" performed for "A" would interfere with the work in "B's" office he would be subject to removal for neglect of his duty under the provisions of Section 11588, Revised Codes of Montana, 1935. However, you state that this clerical work would not interfere with "B's" regular duties and such work would be performed after "B's" regular hours of office work.

To allow "B" to do extra clerical work for "A" under the present emergency when it is difficult to secure competent part time help would seem particularly justified so long as such extra work does not interfere with "B's" regular work and in the sound discretion of the board of county commissioners it is necessary.

Opinion No. 84.

Counties—Deputies—Assistants— Offices and Officers.

Held: A county official may perform clerical work for another county official when such work does not interfere with the regular duties of the former, and he does not purport to act as a deputy or in an official capacity for his employer. Section 4874, Revised Codes of Montana, 1935, grants authority to the board of county commissioners to provide for such an assistant and his compensation.

July 3, 1943.

Mr. Wilbur P. Werner
County Attorney
Glacier County
Cut Bank, Montana

Dear Mr. Werner:

You have requested my opinion concerning the following facts and question:

"'A' is an elected county official of Glacier County with his office at the courthouse at Cut Bank, Montana. 'B' is likewise an elected county official with his office at the courthouse at Cut Bank, Montana. 'A' has requested 'B' to do clerical work for him in his office. This clerical work to be done after office hours and,

The authority for the board of county commissioners to provide an assistant and his compensation for extra work is contained in Section 4874, Revised Codes of Montana, 1935.

It is my opinion that a county official may perform clerical work for another county official when such work does not interfere with the regular duties of the former and is performed outside of the regular hours of his office and in the sound discretion of the board of county commissioners it is necessary, and he does not purport to act as a deputy or in an official capacity for his employer. Section 4874, Revised Codes of Montana, 1935, grants authority to the board of county commissioners to provide for such an assistant and his compensation.

Sincerely yours,
R. V. BOTTOMLY
Attorney General