

Opinion No. 156**Offices and Officers — Deputy
Sheriff as Probation Officer
—Probation Officer, Deputy
Sheriff as**

Held: The sheriff, under-sheriff, or deputy sheriff may not be appointed as chief probation officer.

In the absence of an appointment of a chief probation officer it is the duty of the sheriff of the county to perform all the duties of a chief probation officer without additional compensation, only as directed by the court.

December 30, 1948

Mr. W. W. Lessley
County Attorney
Gallatin County
Bozeman, Montana

Dear Mr. Lessley:

You have submitted the following question:

Please advise this office as soon as possible, whether or not, the District Court may appoint a probation officer who is at present undersheriff of Gallatin County and who will continue to serve as such undersheriff, he will receive \$50.00 per month, as such probation officer, and will also receive, as such undersheriff, ninety percent of the salary allowed the sheriff by statute.

In answering your inquiry, it should be pointed out that, under Chapter 227, Laws of 1943, the whole theory and purpose of the act was, and is, to care for, educate and discipline the child in as near the manner as possible to that of the parent and to treat such juvenile not as a criminal, but as a misdirected and as one needing aid, encouragement, help and assistance.

The act further attempts to remove such juvenile or child from the hands of the regular law enforcement officers by making it mandatory on the Judge to appoint a chief probation officer in the following language, Chapter 116, Laws of 1947:

"In every judicial district of the State of Montana the Judge thereof, having jurisdiction of juvenile matters, shall appoint one discreet person of good moral character, who shall be known as the Chief probation officer of such district and who shall hold his office until removed by the Court."

I met with the judiciary committee of each house when they were considering the original act, Chapter 227, Laws of 1943, and again on the amendment of 1947, and the foregoing was very forcibly enunciated as their intention.

However, to provide for contingencies which might arise, the act further provides:

"In the absence of such appointment of chief probation officer, it shall be the duty of the sheriff of the county to perform all the duties of the chief probation officer in this act enumerated without additional compensation, as directed by the Court."

It would appear from the language of the act as a whole, and it is my opinion that the legislative intent was to remove the child concerned, under the act, from being dealt with by the regular law enforcement officers, and that the act requires of the Judge and makes it his duty to appoint a chief probation officer in each judicial district having the qualifications enumerated therein.

Only in the absence of, or the inability to obtain the services of a chief probation officer, may a sheriff act as such probation officer, but if that contingency arises, then the sheriff must act without additional compensation. If the sheriff may not draw additional compensation while acting as probation officer, neither could his undersheriff or deputy because anything the sheriff may not do his undersheriff and deputy may not do.

Therefore, bearing in mind the legislative intent, it is further my opinion, that the law requires the Judge to appoint a qualified person as such probation officer; and such probation officer may not be the sheriff or his undersheriff, nor his deputy, but must be some qualified person not connected with the regular law enforcement departments.

However, in the absence of such appointment of chief probation officer, it is the duty of the sheriff of the county to perform all the duties of a chief probation officer without additional compensation, only as directed by the court.

Sincerely your,
R. V. BOTTOMLY
Attorney General