

OPINION
64-74

December 1, 1964 (OPINION)

Mr. A. Friedman

Register of Deeds

Cass County

RE: Counties - Officers - Deputies

This is in response to your letter in which you ask for an opinion as to whether or not the county commissioners have the power and authority to reject an elected county official's choice of a deputy appointed by him.

Section 11-10-11 of the North Dakota Century Code, as amended, provides as follows:

"APPOINTMENT AND SALARY OF DEPUTIES AND CLERKS. - The number and salaries of deputies, clerks, and assistants for the county auditor, county treasurer, sheriff, register of deeds, county judge, and clerk of the district court shall be fixed by a resolution of the board of county commissioners. None of the officers mentioned in this section shall appoint as his deputy any other officer mentioned in this section nor the deputy of any such officer. The board of county commissioners upon written recommendation and approval of the state's attorney may appoint one or more assistant state's attorneys or clerks and fix their compensation in the same manner as in the case of deputies and clerks in other county offices. The work of such assistant state's attorneys shall be assigned by the state's attorney." (Emphasis supplied.)

You will note this section provides that the county commissioners shall designate the number of deputies and the salaries. In this respect the language is substantially different than the provisions relating to assistant state's attorneys. We are not aware of any other provision pertaining to deputies of the specific offices, except chapter 11-16 of the North Dakota Century Code pertaining to state's attorneys and the provisions relating to deputy sheriffs. Chapter 11-18, which pertains to register of deeds, contains no provision relating to the appointment of deputies or the salaries. In this respect section 11-10-11 would control.

From the provisions of this section it appears that the county commissioners by resolution determine the number of deputies for each office and the salary. The actual appointment would appear to be within the powers of the officer concerned. The language "None of the officers mentioned in this section shall appoint as a deputy any other officer mentioned in this section nor the deputy of any such officer" leaves the unmistakable impression that the officers elected to the offices mentioned in section 11-10-11 make the appointment.

A deputy normally is a person who may act on behalf of the principal.

The principal invariably is responsible for the acts of his deputy. Generally responsibility and authority are commensurate with each other. If the officer is to be responsible for his deputy it would only be proper that he also have authority to appoint his deputy. It would be somewhat unfair to hold the officer responsible for his deputy where he has no choice in selecting him.

While the county commissioners by statute (section 44-02-04) are authorized to fill vacancies in the county offices, this authority does not extend to the deputies. Because of the relationship between principal and deputy it would require specific legislation to establish in some person other than the principal the authority to appoint deputies. None exist here. The provisions pertaining to the authority of the county commissioners with reference to deputies is only as to the number and salary but not as to the specific appointment.

It is therefore our opinion that the various county officers have the authority to appoint qualified persons for their deputies, except in such offices where other specific provisions have been enacted, for example, additional assistant state's attorneys and sheriffs.

You will also note with reference to state's attorneys that the county commissioners may appoint one or more assistant state's attorneys upon written recommendation and approval of the state's attorney.

HELGI JOHANNESON

Attorney General