

**OPINION
67-54**

April 17, 1967 (OPINION)

Mr. Lyle G. Stuart

State's Attorney

Adams County

RE: Counties - Sheriff - Appointment of Deputy

(Appointment of Deputy Sheriff)

This is in reply to your letter of April 12, 1967, in which you request an opinion on the question of whether the appointment of a deputy sheriff would have to be made by the sheriff himself with the county commissioners determining only the number of deputies and the salary or whether the county commissioners may make the actual appointment of the deputy.

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

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."

The above section would appear to authorize the county commissioners to fix only the number and salary of the deputy sheriffs, leaving the actual appointment of the deputy to the sheriff himself. There is no authority contained in that section for the county commissioners to appoint the deputy sheriff and the statute also implies the sheriff will make the actual appointment since it prohibits the sheriff, among other officers, from appointing any other officer named in the section or the deputy of any such officer, as the sheriff's deputy. We are not aware of any other section which would authorize the county commissioners to make the actual appointment of a deputy sheriff.

Section 11-15-02 of the North Dakota Century Code authorizes the sheriff, in case of emergency, to appoint and qualify special deputies in such numbers as in his judgement are required by the conditions. The statute further provides the sheriff shall have the sole power of appointing special deputies and may remove them at

pleasure. While the last sentence might imply some other officials have the right to appoint regular deputies, we believe the sentence refers to the fact that in emergencies the sheriff may appoint deputies over and above the number authorized by the county commissioners rather than to the fact that some other officers have the right to appoint regular deputies.

Although not directly in point, we would note the decision in *Scofield v. Wilcox*, 33 N.D. 239, 156 N.W. 918 (1916) in which the Court stated, page 919 of the NW Report: "It is true that such deputy is appointed by the sheriff, but a resolution of the board of county commissioners is a prerequisite to such appointment, at any rate if the public funds are sought to be resorted to."

In summary, it is our opinion that the sheriff is authorized to make the actual appointment of a deputy sheriff, subject to the approval as to number and salary by the county commissioners. It is our further opinion that the county commissioners do not have the authority to make the actual appointment of a deputy sheriff.

HELGI JOHANNESON

Attorney General