

Opinion No. 59-04

January 26, 1959

BY: FRANK B. ZINN, Attorney General

TO: Office of the District Attorney Seventh Judicial District Socorro, New Mexico.
Attention: Mr. Julius C. Sanchez Assistant District Attorney

County commissioner's authority to designate depository bank for county funds.

Authority of county officials to employ help without consent of county commissioners.

OPINION

{*7} In your letter of December 10, 1958, addressed to this office, you sought an opinion on two matters. The first question which you posed was, in essence, "Does a board of county commissioners have authority to designate the depository bank to be utilized by all county officials having responsibility for public funds?"

Your second question asked whether county officers had authority to employ extra help other than their allowed deputies and whether they could select employees of their own choosing or whether they were to be guided in such hiring by the county commissioners.

It is my opinion that the answer to your first question is that the county commissioners, as your county board of finance, have the authority to designate the depository bank which must be used by all county officials as a depository for funds of the county.

It is my opinion that county county officers may employ their regular employees without the approval of the county commissioners but in certain instances "extra" employees or "special" employees require the consent of the county commissioners.

My examination of the law applicable to your first question indicates the following provisions to be pertinent.

The responsibility for depositing public funds is generally provided for by Article VIII, Section 4, New Mexico Constitution.

"All public moneys not invested in interest-bearing securities shall be deposited in national banks in this state or in banks or trust companies incorporated under the laws of the state, . . ."

Section 11-2-7, N.M.S.A., 1953 Compilation, requires that:

"Upon the certification or designation of any bank qualified by law to receive public moneys on deposit, the state treasurer, and the several county, city or town treasurers, who shall then have on hand any public moneys by virtue of their several offices, shall make deposit of such moneys in the bank or banks designated, by the authority authorized by law to so designate, . . ."

{*8} And specifically the law provides, in part, by Section 11-2-4, that:

"The board of county commissioners in each county in the state, shall, ex-officio and without additional compensation, constitute a county board of finance, and as such shall have supervision over the determination of the qualifications of, and selection of, banks to receive the public moneys of their respective counties, and of independent rural school districts, rural school districts of municipalities having less than 25,000 population according to the next preceding United States census, and of any special or other districts in their respective counties for which the respective county treasurers of such counties act as ex-officio tax collectors. . . .

The county treasurer of each county in the state shall have supervision of the deposit and safe-keeping of the public moneys of their respective counties and all such moneys which may at any time come into or be in their possession as county treasurers and exofficio tax collectors for the use and benefit of the state or of any county, municipality or district or of any subdivision of any county or of any state or public institution and by and with the advent and consent of the respective boards of finance having jurisdiction over the respective funds shall designate banks qualified to receive on deposit all moneys entrusted in their care."

Accordingly, it is my opinion that county officials may deposit public moneys only in keeping with the designations made by the county board of finance, said board being ex-officio, the members thereof being the duly elected and qualified members of the board of county commissioners.

Your second question was a broad one relating to all county officials and there are several sections of law applicable.

With relation to the authority of a county assessor, I have found the following pertinent sections of the statute. Deputy county assessors are contemplated and provided for in the county classifications as set out by Section 15-43-4 to 15-43-4.8, N.M.S.A., 1953 Compilation (pp).

Section 72-2-44 provides that deputy assessors shall be appointed and their compensation and terms of appointment designated by the assessor with the consent of the county commissioners. It is to be pointed out, however, that this latter section provides only for those special or extra deputy assessors as may be needed for a limited period of time to carry out the provisions of Laws of 1933, Chapter 107, Section 10.

Except for the discretionary employee authority vested in the board of county commissioners of second class counties by Section 15-43-4.5 C, no other authority appears to be provided by which the county board may control the selection of deputies by the county assessor.

Accordingly, with reference to the office of the county assessors, it is my opinion that the assessor, except in second class counties, may select his own regular deputies. It is only in the case of deputies hired for the sake of accomplishing the purposes of the Laws of 1933, Chapter 107, Section 10, that the board of county commissioners has authority to give consent and approval to the employees hired by the assessor.

My examination of the law with respect to the authority of the county clerk reveals the following applicable provisions.

Section 15-43-9 provides for the hiring of additional deputy county clerks with the consent and approval of the board of county commissioners. In keeping with the holding of Taylor v. Board of Commissioners {*9} of Union County, 44 N.M. 605, the court said:

"The wording of the statute authorizes the county clerk to employ a deputy or deputies, and it is contemplated that he will do so, and use the funds provided for such purpose, in the interest of efficiency in caring for the public business."

The salaries provided for in the county classification laws, Sections 15-43-4 to 15-43-4.8, N.M.S.A., 1953 Compilation (pp), implies authority for the hiring of deputy county clerks without the necessity for consent or approval by the county commissioners.

As in the case of deputy county assessors, Section 15-43-4.5 does establish discretionary authority in the board of county commissioners for the hiring of deputy clerks in second class counties. Section 15-43-4.9 authorizes additional situations to be employed only upon the authorization of and at salaries fixed by county commissioners and with the approval of the State Tax Commission.

With relation to the office of county sheriff, I find the following applicable law.

The county sheriff is vested with authority to appoint deputies by virtue of Section 15-40-9. Sections 15-43-4 to 15-43-4.8 provide for the payment of deputy sheriffs' salaries and only in fourth class counties, provided for in Section 15-43-47, are the appointments of deputy sheriffs made at the discretion of the board of county commissioners.

Additional deputy sheriffs may be appointed by the sheriff for and during the terms of District Court sessions and in this case the salaries of those deputies shall be fixed by an order of the district judge as indicated in Section 15-43-4.9 C.

In counties bordering on a foreign country, deputy appointment authority is given the sheriff by Section 15-43-4.9 E. These salaries are to be fixed by the county commissioners. District judges, during times of extraordinary necessity, are granted

authority to authorize the appointment of additional deputy sheriffs and to fix a compensation to be paid. It is my opinion that regular deputy sheriffs may be appointed without the necessity of county commission approval, except in those particular cases otherwise provided for and which I have cited.

The law applicable to county treasurers is as follows:

The county treasurers may look to Section 11-2-46, N.M.S.A., 1953 Compilation, for authority to appoint deputies as required for the administration of their offices. Referring again to Sections 15-43-4 to 15-43-4.8, I find provided salary items for deputy treasurers. In this instance, only the deputy treasurers appointed in second class counties, as required by Section 15-43-4.5, are to be employed at the discretion of the board of county commissioners. Other than these exceptions, it is my opinion that a county treasurer is free to select his deputies without need for county commission approval.

Authority for the appointment of deputy county surveyors is compiled as Section 15-41-2. No requirement for the commissioners' approval or consent is found.

It is my opinion that the several county officials generally have sole authority for the appointment of their regular deputies and that only in certain exceptional instances do the boards of county commissioners have authority to decide the need for the employment of extra deputies or the authority to give final consent and approval to appointments made by the respective county office holders.

Hilton A. Dickson, Jr.