

Opinion No. 56-6545

November 26, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. C. C. Chase, Jr., District Attorney, Third Judicial District, Las Cruces, New Mexico

In reply to your letter of October 3, 1956, in which you raise the following question:

"Do the County Commissioners have authority to appoint a Deputy County Clerk for the sole purpose of issuing marriage licenses for Dona Ana County?"

the following is submitted for your consideration.

As you know, § 15-19-1, N.M.S.A., 1953 Compilation, provides for the election of a county clerk in the same manner as other county officials are elected. In addition, § 15-39-2, N.M.S.A., 1953, requires a posting of bond for the faithful performance of his duty. In this election and posting of bond is the acceptance of responsibility by the county clerk for the faithful performance of the duties of the office, and inherent in the acceptance of the responsibility is the right to select their deputies.

Keeping in mind the legislative grant in § 15-43-9, which provides for additional deputies for county clerks, and restricts the county commissioners to the giving of consent and approval, is again found by implication the right of the county clerk to appoint his deputies. In this connection is set forth part of § 461 at 43 Am. Jur., page 219:

"But as a general rule, legislative authority is essential to the appointment of a general deputy or a deputy or other assistant to whom to delegate quasi-judicial duties and matters.

Thus such offices as a county clerk, or clerk of a county court normally have the right to appoint deputies." (Emphasis supplied).

Again, as was pointed out in the case of Taylor v. Board of Com'rs, of Union County, 44 N.M. 605, the Court used this language:

"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 public business."

Thus, it is the opinion of this office that the County Commissioners do not have authority to appoint a Deputy County Clerk.

Trusting we have fully answered your inquiry, we remain

By Harry E. Stowers, Jr.

Assistant Attorney General