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UNDER THE PROVISIONS OF DIVISION (E) (1) OF §1907.101, R.C., IN COUNTY COURT DISTRICTS HAVING APPOINTED CLERKS, THE BOARD OF COUNTY COMMISSIONERS OF A COUNTY MAY, WITHOUT THE CONCURRENCE OF THE COUNTY COURT JUDGE OR JUDGES, APPOINT A DEPUTY CLERK OR CLERKS OF THE COUNTY COURT; AND A DEPUTY CLERK SO APPOINTED RECEIVES SUCH COMPENSATION AS THE BOARD MAY PRESCRIBE—§1907.101, R.C.

SYLLABUS:

Under the provisions of division (E) (1) of Section 1907.101, Revised Code, in county court districts having appointed clerks, the board of county commissioners of a county may, without the concurrence of the county court judge or judges, appoint a deputy clerk or clerks of the county court; and a deputy clerk so appointed receives such compensation as the board may prescribe.

Columbus, Ohio, May 10, 1961

Hon. Fred F. Fox, Prosecuting Attorney
Noble County, Caldwell, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Will you please give me an opinion relative to Section 1907.101 of the Revised Code of Ohio? In this county the commissioners have appointed a clerk to the County Court, the salary of which is One Hundred Dollars per month. Will you please advise me whether or not the County Commissioners have the authority to appoint an additional clerk to the county court with or without pay. The purpose of this clerk would be to take bond from persons who are being charged with a misdemeanor while the regular clerk is off duty, in other words, largely at night.

"If the commissioners do have this authority is it necessary to have the concurrence of the county judge in the appointment of such extra clerk?"

Section 1907.101, Revised Code, reads in part:

"(A) The clerk of courts shall be the clerk of the county court except that the board of county commissioners, with the concurrence of the county court judge or judges, may appoint a clerk for each county court judge. Such appointed clerk shall serve at the pleasure of the board and shall receive compensation as yet set by the board, payable in semimonthly installments from the treasury of the county.

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"(E) (1) In county court districts having appointed clerks, deputy clerks may be appointed by the board of county commissioners and clerks and deputy clerks shall receive such compensation payable in semi-monthly installments out of the county treasury as the board may prescribe. Each deputy clerk shall take an oath of office before entering upon the duties of his office, and when so qualified, may perform the duties appertaining to the office of the clerk. The clerk may require any of the deputy clerks to give bond of not less than three thousand dollars, conditioned for the faithful performance of his duties.

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Answering your question, therefore, the board of county commissioners may appoint a deputy clerk who may perform the duties appertaining to

the office of clerk. As to salary, that is set by the board and there appears to be no restriction against a person serving in such capacity without compensation if he chose to so do.

Also, division (E) (1) of Section 1907.101, *supra*, clearly states that "deputy clerks may be appointed by the board of county commissioners." There is no requirement that the concurrence of the county court judge must be had. While there is such a provision in division (A) of that section as to appointment of a clerk for the judge, I do not believe that this provision may be read to apply to the appointment of deputy clerks. I am of the opinion in this regard that the provisions for concurrence of the judge in the appointment of a clerk were inserted to allow the judge to have a voice in determining whether the clerical duties of the court should be handled by the clerk of courts or by an appointed clerk.

In conclusion, therefore, it is my opinion and you are advised that, under the provisions of division (E) (1) of Section 1907.101, Revised Code, in county court districts having appointed clerks, the board of county commissioners of a county may, without the concurrence of the county court judge or judges, appoint a deputy clerk or clerks of the county court; and a deputy clerk so appointed receives such compensation as the board may prescribe.

Respectfully,

MARK MCELROY

Attorney General