

Salaries of Deputies, as Fixed by Law. County Commissioners, Authority Over Deputies' Salary.

Under Chapter 85, approved March 5, 1909, salaries for deputies in counties of the first, second, third, fourth and fifth classes are mandatory, and the commissioners have no option in determining the amount of such salaries, nor have they any option in fixing the salary of the under-sheriffs in counties of the sixth, seventh and eighth classes. The salaries of all other deputies in counties of the sixth, seventh and eighth classes may be fixed by the Board of County Commissioners at not to exceed the maximum amount named in the law. The salary of special deputies authorized by Section 3123, Revised Codes, may be fixed by the Board of County Commissioners. Said Chapter 85 went into force and effect on March 6, and the deputies' salaries run from that date.

Helena, Montana, March 20, 1909.

Hon. J. C. Huntoon, County Attorney, Lewistown, Montana.

Dear Sir:

I am in receipt of your letter of the 18th inst., requesting an opinion upon the following questions, relating to the salaries of deputies under House Bill No. 202, approved March 6, 1909, to-wit:

1. Are the salaries therein fixed mandatory or optional with the commissioners?
2. Does the law apply to all employes, or only to those allowed by law and designated as deputies in the code?
3. When does the increased salary begin to run?

Your first two questions were answered in an opinion given to Honorable O. D. Gray, County Attorney of Teton County on March 13, a copy of which I enclose herewith, in which it was held that the salaries fixed by said law for deputies in counties of the first, second, third, fourth and fifth classes were mandatory and that the commissioners had no option in determining the amount of such salaries, and it also appears from the bill that the salary of the under sheriff in counties of the sixth, seventh and eighth classes is mandatory. Such opinion further holds that the salaries of other deputies in counties of the sixth, seventh, and eighth classes, as fixed by such bill, were not mandatory on the Board of County Commissioners, except that they could not exceed the salaries therein fixed. The same opinion also holds that this new law does not apply to extra deputies authorized by the Board of County Commissioners pursuant to Section 3123 of the Revised Codes.

In answer to your third question, you are advised that the law went into full force and effect upon its approval on March 6, and that the salaries, as therein fixed, began to run from that date, as it has been heretofore held by this office that deputies salaries may be increased or decreased by the legislature at any time. (See opinion to Hon. Harry R. Cunningham, Opinions Attorney General 1906-'08, p. 61

I herewith enclose you a copy of said bill as amended and passed

Very truly yours,

ALBERT J. GALEN,

Attorney General.