

Deputy Sheriff, Salary of. Sheriff, Deputy, Right to Agree for Lesser Salary. Salary, Deputy Sheriff How Determined. Waiver by Officer of His Compensation. Demand, Right to Make Against County for Salary.

The law relating to salary of deputy sheriff and his right to contract for a lesser salary, and also his right to make demand against the county for a balance claimed due him, examined and construed.

March 15, 1916.

Hon. Stephen J. Leahy,
County Attorney,
Wibaux, Montana.

Dear Sir:

I am in receipt of your letter of the 9th instant, submitting the questions:

1. If a deputy sheriff agrees to discharge the duties of such office at a salary less than the compensation fixed by law, may he at the close of his term, make legal demand against the county for the salary named in the law?

2. If an under-sheriff files bills against the county for his compensation as under-sheriff at an amount less than that fixed by law, may he later legally claim from the county, the difference between the bills filed and the compensation as fixed by law?

3. If the county commissioners at the request of an under-sheriff, rent a building for his use, and to aid him in boarding prisoners, for which board the county pays the under-sheriff fifty cents per day, has the county a legal claim against such under-sheriff for the amount of the rent paid on such building?

1. The compensation of deputy sheriffs and under-sheriffs of the various counties is fixed by the provisions of Chapter 132, Session Laws of 1911. In the absence of any contract, agreement or order to the contrary, the salary there fixed must be paid. Whether or not the county board is vested with authority to make a legal contract for the payment of a less sum than fixed, is not at the present time capable of definite determination. The analysis given to our statutes by older decisions of our Supreme Court would seem to indicate that such power exists.

Jobb v. Meagher Co. 20 Mont. 433;

Penwell v. County Com. 23 Mont. 357;

Hogan v. Cascade Co. 36 Mont. 173;

and in this connection, we may also cite *Opinions Attorney General, 1910-12, page 25.* A later decision of the Supreme Court, however, leaves this question somewhat in doubt.

State ex rel Hay v. Hindson, et al. 40 Mont. 353, 106 Pac. 362. In this latter case, however, there was not any element of contract or

agreement involved, and the clause of the statute under which the commissioners assumed to act in refusing to allow the full compensation, was declared inoperative and void. It would seem, however, that where an officer contracts and agrees to perform the duties of an office for a certain sum, that he should either accept that sum as full compensation, or else let it be known at the earliest practicable date that he did not intend to be bound by his contract. In this particular case, it appears that the deputy made no demand against the county for the extra compensation as deputy sheriff until after the expiration of his term. In such case I am inclined to think that his claim should be ignored, and in this particular case, it appears that the greater part of the claim of the deputy for the extra compensation, is barred by the provisions of Section 2945, which requires every claim against the county to be presented within one year, and if it has been presented and rejected, the provisions of Subdivision 2, Section 6450, requiring action within six months, may be consulted if it applies.

2. It does not appear that there was any agreement whatsoever, respecting the salary of the under sheriff but that the under sheriff, instead of filing his claim for the full compensation allowed him under the law, filed it for only a part of that compensation. I do not understand that this constitutes a waiver on the part of the officer of the remainder of his claim, but believe that he may now present his claim for the balance of the compensation due, and that the same is a legal charge against the county.

3. Under the provisions of Section 9773, Revised Codes, it is the duty of the sheriff to provide prisoners with necessary food, etc, for which he shall be allowed a reasonable compensation. This is a Code section, and while it is still in full force and effect, the provisions of the Act of March 15, 1895, were later enacted, and in such later Act the amount which the county may allow for the board of prisoners is limited to fifty cents per day for prisoners, and seventy-five cents per day for witnesses. This is the maximum charge which may be allowed by the board.

Section 3138, Revised Codes.

When, therefore, the board allowed the sheriff or under-sheriff this full compensation, as fixed by Section 3138, it was without authority to go beyond that. Hence, the board could not in addition thereto, under the claim of rent, or otherwise, allow anything additional. Neither is there any duty resting upon the board, nor any authority vested in them, to rent houses for the benefit of any county officer, and in as much as this house appears to have been rented at the request of the under-sheriff and for his use and benefit, the rent paid therefore is a proper charge against such under-sheriff.

Yours very truly,

J. B. POINDEXTER,

Attorney General.