

**Deputy County Officers—Power of County Commissioners to Fix Salary of.**

Chapter 204 of the Laws of 1921 does not give the County Commissioners power to change the compensation of regular deputies as fixed by Chapter 222 of the Laws of 1919, but their authority to fix compensation of deputies is limited to deputies employed temporarily.

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My dear Mr. Blackstone:

You have inquired whether, by Chapter 204 of the Laws of 1921, the power is given to the Board of County Commissioners to fix the salaries of deputy county officers. A number of other inquiries from various counties have come to this office asking whether it is within the power of the Commissioners to increase the salaries of deputies in view of the provisions of Chapter 222 of the Laws of 1919 fixing salaries at "not less than" the amounts therein named, and in view of the amendment to said chapter contained in Chapter 204 of the Laws of 1921.

Can the Board of County Commissioners, under the law as contained in these enactments, increase the salaries of deputy county officers?

Prior to its amendment, Section 2 of Chapter 222 of the Laws of 1919 provided as follows:

"The Boards of County Commissioners in the several counties of the State shall have the power to fix the compensation allowed any deputy or assistant under this Act, where any deputy or assistant is employed for a period of less than one year the compensation of such deputy or assistant shall be for the time so employed provided, the rate of such compensation shall not in any event be to exceed the rates fixed by this Act for similar deputies or assistants."

As amended by Chapter 204 of the Laws of 1921, it provides as follows:

"The Boards of County Commissioners in the several counties of the state shall have the power to fix the compensation allowed any deputy or assistant under this act; where any deputy or assistant is employed for a period of less than one year the compensation of such deputy or assistant shall be for the time so employed; provided, the rate of such compensation shall not in any event be to exceed the rates fixed by this. act for similar deputies or assistants; said Boards of County Commissioners shall likewise have the power to fix and determine the number of all deputy county officers, provided, however, that the number of said deputies shall not be greater than the maximum fixed by law."

Prior to the amendment of Section 2, *supra*, the Supreme Court, in the case of *Modesitt v. Flathead County*, 57 Mont. 216, 217, held that the County Commissioners had authority to fix the salary of a deputy only when deputies are employed temporarily, and that the Act itself fixed the salaries of the regular deputies. The court there used the following language:

"The general purpose of the Act referred to is to fix the annual compensation of the regular deputies of county officers, the rate being determined by the class within which each county falls, and to vest in the board of commissioners of each of the several counties the power to fix the compensation of all other deputies or assistants. \* \* \*

"Section 1 has reference to compensation of deputies who are appointed by the several assessors in the counties of the fourth and fifth classes for services during the term. It fixes this at the annual minimum rate of \$1,650, which is equivalent to the monthly minimum rate of \$137.50. Section 2 has reference only to deputies who may be appointed for temporary service during the busy months of the year when the assessors are engaged in obtaining schedules of the property of taxpayers from which to make up their assessment-rolls. As to the former, the board cannot decrease the compensation fixed by section 1. As to the latter, it is vested with discretionary power to fix the compensation at any rate it may deem expedient for the time during which the deputy serves, provided it does not exceed the rate fixed for regular deputies. The first sentence expressly confers the power to fix the compensation of those appointed for temporary service. The proviso then declares that 'the rate of such compensation shall not in any event exceed the rate fixed by this Act for similar deputies or assistants'; that is, for deputies or assistants whose compensation is fixed by section 1. The plaintiff, having accepted service under the order of the board, was entitled to receive the monthly compensation fixed by it and no more."

It is true that the punctuation as it appeared in Chapter 222 has been changed, and were we confined in reaching a conclusion to the changes in punctuation the conclusion would be reached that it is within the power of the County Commissioners to fix the compensation of any deputy whether a regular or temporary one. But no word of the language has been changed, and in order to give any meaning to the clause, "provided, the rate of such compensation shall not in any event be to exceed the rates fixed by this act for similar deputies or assistants," it is necessary to hold that the amended section does not repeal the preceding sections of Chapter 222. This clause recognizes rates fixed by the Act as still in effect at the time of the enactment of Chapter 204.

It is to be presumed that the Legislature knew of the decision of the Supreme Court in the *Modesitt Case*, *supra*, and if they intended to make a change with reference to the power of the board to fix the compensation of deputies, such intention would have been clearly expressed.

That the Legislature did not intend to make any change in the Act in the way of punctuation may be ascertained from the history of the Act. When the original bill was introduced in typewritten form the punctuation of the part that was formerly Section 2 of Chapter 222 was exactly as in Chapter 222. No amendment of the punctuation was proffered during the progress of its enactment, but some uncertain lead pencil marks appear in the copy of the original bill, and these marks found their way into the enrolled bill as the punctuation of the Act in its final form, resulting in its passage without any amendment regarding the punctuation. Thus the Modesitt Case is still applicable, and the only effect of Chapter 204 is to give power to the Commissioners to fix the number of deputy county officers, and the effect of the law is unchanged as to salaries of deputies, except as to special and temporary deputies.

It is my opinion, therefore, in order to give effect to the section as a whole, including the proviso above quoted, and in view of the Modesitt Case, above, that Chapter 204 does not change the law with reference to the compensation of deputies, but merely adds the provision that the Commissioners shall have the power to determine their number, provided that such number shall not exceed the maximum fixed by law, and that the County Commissioners are without power to change the compensation of regular deputies as fixed by Chapter 222, but that their authority to fix compensation of deputies is limited to deputies employed temporarily.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.