

No. 144

**COUNTY COMMISSIONERS—UNDERSHERIFFS—
DEPUTIES—ASSISTANTS**

Held: Section 4873 of the Revised Codes of Montana, 1935, prescribes the minimum compensation allowed to any deputy or assistant designated under the act, and Section 4874 prescribes the maximum compensation allowed, when it is not otherwise definitely fixed by the provisions of Section 4873.

June 19, 1941.

Mr. Homer A. Hoover
County Attorney
McCone County
Circle, Montana

Dear Mr. Hoover:

You have asked for an interpretation of the provisions of Sections 4873 and 4874, Revised Codes of Montana, 1935, with reference to the minimum and maximum salaries allowed to deputies and assistants, particularly the undersheriff and deputy sheriff in counties of the seventh class.

In the case of *Delfer vs. Teton Land and Investment Co.*, 24 Pac. (2nd) 702 (Wyoming), an undersheriff was defined to be a general deputy. The Court in that case said:

"An undersheriff has always, in every county of the state, performed the duties of a deputy, and has always been regarded as qualified to act for the sheriff the same as a deputy. There can be no doubt, we think, that he is simply what has been termed a general deputy, slightly more important than a simple deputy, by reason of the fact that he is qualified and designated by law as the particular deputy who, under certain conditions, shall become the sheriff. *Shirran v. Dallas*, 21 Cal. App. 405, 132 P. 462; *Allen v. Smith*, 12 N. J. Law 159, 162; *Meyer v. Bishop*, 27 N. J. Eq. 141, 142. See 57 C. J. 730."

Thus classifying the undersheriff as a general deputy, let us proceed to construe the provisions of Section 4873 and 4874 of the Revised Codes of Montana, 1935.

Section 4873 provides, among other things, the annual compensation allowed to an undersheriff and the deputy sheriff in a county of the seventh class is as follows:

Undersheriff, at a rate not less than \$1800.
Deputy sheriff, at a rate not less than \$1600.

The provisions of Section 4873 are mandatory and the Board of County Commissioners is precluded from fixing the compensation of the undersheriff, deputy sheriff or any other deputy or assistant designated under the act at a rate less than the amount specified in said section, even though the rate therein fixed is in excess of 80% of the salary of the officer under whom such deputy or assistant is serving. For an example, in Section 4872, the compensation of the sheriff in counties of the seventh class is \$2000 and, in Section 4873, the compensation of the undersheriff is at a rate of not less than \$1800, which is more than 80% of the compensation allowed to the sheriff. Nevertheless, said Section 4873 definitely fixes the undersheriff's compensation at \$1800.

Section 4874 gives the Board of County Commissioners, in the several counties of the state, power to fix the compensation allowed to any deputy or assistant, providing the salary allowed is not more than 80% of the salary of the officer under whom such deputy or assistant is serving, unless otherwise provided by law; in the case of the undersheriff in counties of the seventh class, it is otherwise provided by law and is fixed at \$1800 per annum. It cannot be reduced below this minimum.

Therefore, it is my opinion Section 4873 prescribes the minimum compensation allowed to any deputy or assistant designated under the act, and Section 4874 prescribes the maximum compensation allowed, when computation discloses it is not below the minimum compensation prescribed by Section 4873.

Opinion No. 115, to which you refer, is limited to the facts stated therein. Nevertheless, I desire this opinion be rendered as a supplement thereto.

Sincerely yours,

JOHN W. BONNER
Attorney General