

Opinion No. 66**County Officers—Increased Salaries—Budget Law**

Held: The 10% limitation on the increase of any one item of the budget act cannot preclude a mandatory increase in salary of county officers, undersheriffs and deputy sheriffs.

July 25, 1958

Mr. John L. McKeon
County Attorney
Deer Lodge County
Anaconda, Montana

Dear Mr. McKeon:

You have requested my opinion concerning the payment of the increase in salaries granted by the 1957 Legislature under the County Budget Act with its 10% limitation on an increase on the salaries and wages items of the budget. Under Chapter 22, Laws of 1957, which amended Section 25-605, RCM, 1947, increases in salaries of enumerated county officers were granted. The provisions of this act are mandatory in nature and those officers who will begin a new term

after the effective date of the act will receive the increase. County commissioners will also receive additional compensation under the provisions of Section 16-912, RCM, 1947, as last amended by Chapter 238, Laws of 1957.

From your letter it appears that the additional compensation paid the officers will result in an increase over the 10% allowed under Section 16-1904 (2), RCM, 1947, the applicable part of which reads as follows:

“. . . the amount appropriated and authorized to be expended for any item contained in such budget, except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants and interest thereof, must not exceed by more than ten per centum (10%) the amount actually expended for such item under the appropriation contained in the budget approved and adopted for the fiscal year immediately preceding, . . .”

The problem is made more difficult by the fact that the undersheriff must receive 95% of the salary of the sheriff and deputy sheriffs must receive 90% of the salary of the sheriff as stated in Section 25-604, RCM, 1947. This same statute however authorizes the commissioners at their discretion to fix the salaries of deputies and assistants of other county officers at an amount not to exceed 90% of their principals.

Chapters 22 and 238, Laws of 1957, grant salary increases to county officers. In each chapter the language used is mandatory in nature and the officers must receive the increase. Also, as was noted above, undersheriffs and deputy sheriffs must receive additional pay when the sheriffs salary is increased. As these are specific statutes enacted at a later date than the County Budget Law, they must control as to any inconsistency. In *State ex rel. Esgar vs. District Court*, 56 Mont. 464, 185 Pac. 157, our Supreme Court quoted with approval the following rule:

“If one statute conflicts with a portion of another, so as to exhibit an inconsistency, then the inconsistent portion of the previous statute cannot stand, and is said to be repealed by implication. When two statutes conflict, the subsequent repeals the former by implication only so far as it conflicts therewith.”

Applying the above rule to the facts under consideration, the 10% limitation of the budget act is repealed by the implication only by the amount the increase in salaries will exceed the 10%. As it is mandatory that county officers, undersheriffs and deputy sheriffs receive the increase, if the Board of County Commissioners in adopting the budget finds that the 10% limitation does not permit all of the increase to be given then the 10% limitation may be exceeded to accommodate the whole amount of the salary to be paid to county officers, undersheriffs and deputy sheriffs.

The legislature in granting the increase in salaries did not express an intent to repeal the County Budget Law and the foregoing construction of the budget law and Chapter 22 and 238, Laws of 1957, makes both operative as far as possible. In *State vs. Certain Intoxicating Liquors*, 71 Mont. 79, 227 Pac. 472, it was held,

"It is our duty to reconcile the statutes, if possible, and make them operative."

It is therefore my opinion that the 10% limitation on the increase of any one item of the budget act cannot preclude a mandatory increase in salary of county officers, undersheriffs and deputy sheriffs.

Very truly yours,
FORREST H. ANDERSON
Attorney General