

VOLUME NO. 38
35

OPINION NO.

COUNTY COMMISSIONERS - Authority of county commissioners to fix salaries or wages of county employees;
COUNTY OFFICERS AND EMPLOYEES - Authority of county commissioners to fix salaries or wages of county employees;
MONTANA CODE ANNOTATED - Title 7, chapter 6, part 23.

HELD: In budgeting, the board of county commissioners may fix and determine specific wages and salaries pursuant to their authority to adjust and revise line item amounts in the proposed budget. Where the board has previously adopted a resolution limiting yearly salary and wage increases to five percent and they adopt a general budget for salaries and wages without individual salary detail, salary and wage increases of county employees cannot exceed the five percent amount established. A county official has no authority to increase his or her employees individual salaries in excess of the five percent limitation even if greater increases could be accommodated within the total salary budget established for that office.

16 August 1979

Rae V. Kalbfleisch, Esq.
Toole County Attorney
Toole County Courthouse
Shelby, Montana 59474

Dear Mr. Kalbfleisch:

You have requested my opinion on the following question:

Does the Board of County Commissioners of Toole County have the authority to establish a five percent annual wage increase limitation for all county employees.

The county budgeting process is provided for by statute in Title 7, chapter 6, part 23, MCA. The steps of this process relevant to your question are as follows:

1. Each county official in charge of an office annually files with the clerk and recorder detailed and itemized estimates of all expenses required by the office. § 7-6-2311(1), MCA.
2. The clerk and recorder prepares a complete expenditure program. § 7-6-2313, MCA. Salaries and wages are one of the classifications of expenses of this program. § 7-6-2314(1)(a). Each salary in this class must be set forth separately. § 7-6-2314(2)(a), MCA.
3. The Board of County Commissioners considers the budget in detail and makes any advisable revisions, reductions, additions or changes. The result of this process is a preliminary budget. § 7-6-2315(2), MCA.
4. The budget, as finally determined by the board, sets out each item for which expenditure or appropriation is authorized. § 7-6-2320(1), MCA. The budget is approved and adopted by resolution. § 7-6-2320(2), MCA.

Under section 7-6-2315(2), MCA, the board may revise and change any amounts in the proposed budget. That authority extends to "details" of the budget, including line item amounts for individual salaries and wages. Thus the board has authority to fix or limit wages and salaries of county employees.

Your request for an opinion arose, however, because the Toole County Treasurer's budget for the 1979 fiscal year was submitted to and approved by the county commissioners with-

out any line item specification of salaries as required by section 7-6-2314(2)(a), MCA; rather, the Treasurer's budget contained an amount only for the general class of salaries and wages for her office. The Treasurer thereafter asserted that she should be allowed to increase the salaries and wages of individual employees in her office so long as the total salaries and wages do not exceed the budgeted amount for that class. The individual raises she proposes to submit would exceed a five percent limitation on yearly increases of salary and wages of county employees which was fixed by the Toole County Commissioners in a formal resolution adopted prior to the 1979 fiscal year budget. The Board of County Commissioners has broad rule making authority under Section 75-2102, MCA, which provides:

The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to make and enforce such rules for its government, the preservation of order and the transaction of business as may be necessary.

Whether or not the use of this general rulemaking authority by the commissioners in adopting the five percent limitation was appropriate in light of the line item requirements for salaries need not be addressed. The five percent rule, at minimum, refutes any contention that in adopting the Treasurer's budget the board intended to approve any salary or wage increase in excess of five percent. The budget must be deemed as approved subject to the five percent limitation. While the Board could have provided for increases in excess of 5% by approving specific individual salary levels in the fiscal 1979 budget, a variance from the 5% guideline cannot be implied from approval of a general, non-detailed amount fixed for salaries in the Treasurer's budget. The maximum salary or wage approved for each individual employee of the treasurer is limited to a five percent increase over the salary or wage for the previous year.

I am aware that there is a factual dispute as to whether the board of county commissioners agreed, in the July, 1978 meeting with the treasurer, to allow increases in excess of five percent for her employees. However, there are no formal minutes of such a meeting, and no formal resolution was adopted. Such agreement, even if made, is no substitute for formal action of the board and cannot nullify the specific limitation previously adopted with respect to salaries and wages.

THEREFORE, IT IS MY OPINION:

In budgeting, the board of county commissioners may fix and determine specific wages and salaries pursuant to their authority to adjust and revise line item amounts in the proposed budget. Where the board has previously adopted a resolution limiting yearly salary and wage increases to five percent and they adopt a general budget for salaries and wages without individual salary detail, salary and wage increases of county employees cannot exceed the five percent amount established. A county official has no authority to increase his or her employees individual salaries in excess of the five percent limitation even if greater increases could be accommodated within the total salary budget established for that office.

Very truly yours,

MIKE GREELY
Attorney General