

VOLUME NO. 43

OPINION NO. 44

COUNTIES - Calculation of base salary and longevity pay for sheriffs and deputy sheriffs;

COUNTY COMMISSIONERS - Calculation of base salary and longevity pay for sheriffs and deputy sheriffs;

COUNTY OFFICERS AND EMPLOYEES - Calculation of base salary and longevity pay for sheriffs and deputy sheriffs;

PEACE OFFICERS - Calculation of base salary and longevity pay for sheriffs and deputy sheriffs;

SALARIES - Calculation of base salary and longevity pay for sheriffs and deputy sheriffs;

SHERIFFS - Calculation of base salary and longevity pay for sheriffs and deputy sheriffs;

MONTANA CODE ANNOTATED - Sections 7-1-2111, 7-4-2503, 7-4-2508, 7-4-2510;

OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 34 (1989), 39 Op. Att'y Gen. No. 78 (1982), 39 Op. Att'y Gen. No. 65 (1982), 39 Op. Att'y Gen. No. 21 (1981).

- HELD: 1. The "base salary" of a sheriff under section 7-4-2503, MCA, is based on the class of the county and the county's population. For purposes of calculating longevity payments for sheriffs, total years of service with the sheriff's department are included.
2. The "minimum base annual salary" of a deputy sheriff or undersheriff for purposes of determining longevity payments under section 7-4-2510, MCA, is based on the sheriff's base salary as set forth in section 7-4-2508, MCA. Each year of service with the sheriff's department is included when calculating longevity payments for a deputy sheriff or undersheriff.

November 28, 1989

David L. Nielsen
Valley County Attorney
P.O. Box 1187
Glasgow MT 59230

Dear Mr. Nielsen:

You have requested my opinion on the following questions:

1. What amounts are included in the "base salary" for purposes of computing longevity pay for county sheriffs, and is the longevity payment applied retroactively to include years of service completed before July 1, 1989, the date of effect of the recently-adopted House Bill 440?
2. What amounts are included in the "minimum base annual salary" for purposes of computing longevity pay for deputy sheriffs or undersheriffs, and is the time of service completed by a deputy prior to the effective date of the longevity statute included for the purpose of computing longevity pay?

Longevity pay for sheriffs, addressed in section 7-4-2503(2)(c), MCA, is based on the sheriff's "base pay," as defined in section 7-4-2503(1), MCA, as amended by House Bill 440 in 1989. The longevity pay of deputy sheriffs and undersheriffs is provided for in section 7-4-2510, MCA, and involves a formula based on the "minimum base annual salary of the deputy or undersheriff."

I have researched the relevant statutes, §§ 7-4-2503 and 7-4-2510, MCA; the legislative history of House Bill 440 amending section 7-4-2503, MCA; and Opinions of the Attorney General, including 39 Op. Att'y Gen. No. 21 at 82 (1981), 39 Op. Att'y Gen. No. 65 at 242 (1982), and 39 Op. Att'y Gen. No. 78 at 299 (1982). Based on my research, I come to the following conclusions.

Base salary for county sheriffs under section 7-4-2503(1), MCA, is dependent upon two factors: the class of the county and the population of the county. In counties of the first through fifth classes a sheriff's annual base salary is equal to \$14,000 plus \$10 for each 100 persons in the county. In counties of the sixth and seventh classes, a sheriff's base salary is equal to \$12,000 plus \$20 for each 100 persons in the county. In section 7-4-2503(1), MCA, subsection (a) defines base salary for sheriffs in one set of counties and subsection (b) represents the definition of base salary for county sheriffs in another set of counties.

This statutory language is clear and unambiguous. With a statute speaking for itself, there is nothing to be construed. *State v. Hubbard*, 39 St. Rptr. 1608, 1611, 649 P.2d 1331, 1333 (1982). However, even if one were to argue that the language is not clear and unambiguous, the legislative history including supplemental information provided to the House Committee on State Administration upon discussion of House Bill 440 supports the above discussion. The information provided to the House Committee included a typical calculation of a sheriff's salary.

The committee members were told that a sheriff's base salary is dependent upon and determined by two factors: (1) the class of the county, which is based on the county's taxable value (§ 7-1-2111, MCA), and (2) the population of the county. This representation to the Committee evidences the Committee's intent and expectations as to how the calculation of base salary was to be made. Minutes of the House Committee on State Administration, February 10, 1989 (hereinafter Minutes). While *dictum* in 39 Op. Att'y Gen. No. 65 suggested a different approach to calculation of base salary, the legislative intent is clear and unequivocal.

The second part of your first question concerns whether or not longevity payments apply retroactively to include years of service completed prior to the enactment and effective date of House Bill 440. The legislative history showing legislative intent and discussion by the House Committee on State Administration included the following information:

COMMENTS ON THE BILL

According to testimony, the intent of the bill is to give sheriffs the same longevity payment that deputy sheriffs currently receive.

Under this bill, a sheriff would receive a longevity payment equal to 1% of his base salary of each year of service with the sheriff's department. [Minutes.]

An illustration was made to the Committee involving a sheriff who had ten years of service. The Committee indicated that after enactment of this amendment, the computation of longevity for the sheriff used in the example would require multiplication of a dollar figure by ten. Thus, it seems clear the Committee intended that the longevity payment be based on a sheriff's total years of service and not merely years of service performed after July 1, 1989.

Your second question involves section 7-4-2510, MCA. The calculation of compensation for an undersheriff is "95% of the salary of that sheriff" not including longevity payments or payments for hours worked overtime. § 7-4-2508(1), (3), MCA. For a deputy sheriff, the statutory scheme is based on county population and a percentage of the sheriff's salary. § 7-4-2508(2)(a), MCA. This question has been answered by a prior Attorney General's Opinion, 39 Op. Att'y Gen. No. 21 at 82 (1981). The "minimum base annual salary" of a deputy sheriff or undersheriff for purposes of determining longevity payments under section 7-4-2510, MCA, is based on the sheriff's base salary as set forth in section 7-4-2508, MCA.

A recent Attorney General's Opinion, 43 Op. Att'y Gen. No. 34 at 4 (1989), answers your final question regarding the calculation of the years of service of undersheriffs and deputy sheriffs and longevity pay. That opinion points

out that each year of service with the sheriff's department is included when calculating longevity payments for a deputy sheriff or undersheriff.

THEREFORE, IT IS MY OPINION:

1. The "base salary" of a sheriff under section 7-4-2503, MCA, is based on the class of the county and the county's population. For purposes of calculating longevity payments for sheriffs, total years of service with the sheriff's department are included.
2. The "minimum base annual salary" of a deputy sheriff or undersheriff for purposes of determining longevity payments under section 7-4-2510, MCA, is based on the sheriff's base salary as set forth in section 7-4-2508, MCA. Each year of service with the sheriff's department is included when calculating longevity payments for a deputy sheriff or undersheriff.

Sincerely,

MARC RACICOT
Attorney General