

**Board of County Commissioners, Power Of. Salary of  
Deputy Officers.**

It is not within the province or power of the Board of County Commissioners to allow a salary to deputy county officers in excess of the maximum prescribed by law.

Helena, Montana, May 7, 1907.

The Honorable Board of County Commissioners,  
Butte, Montana,

Gentlemen:—

On Thursday last your honorable body waited on me in company with the Assessor of your county, respecting difficulties by you confronted in the administration of the law, because of the alleged fact that the compensation prescribed by law for deputy officers is inadequate to

to secure men of competency to do the work devolving upon the Assessor, as by law prescribed, and in this connection, you asked something in the way of assistance or encouragement from my department whereby the law upon the subject may be evaded or disregarded. At the conclusion of your interview you left with me a statement of the conditions and facts respecting the Assessor's office made to you on the 1st inst., by P. F. Boland, County Assessor, in which statement it is asserted that the deputy assessors will resign unless their compensation is increased. You also left with me for consideration, the opinion of County Attorney James E. Murray, by Edwin M. Lamb, Assistant County Attorney, wherein it is held, in substance, that the law has fixed the maximum compensation to be allowed and paid deputies, and that it is not, therefore, within your province to allow anything in excess of the salaries so prescribed.

After full and careful consideration of what you have said and of the statement of the county assessor, and of the opinion of the county attorney, I must say, that I concur in the advice and direction given you in the county attorney's opinion with respect to the subject matter. The law having prescribed the maximum salary to be paid deputies, it is not within your province, my province, nor that of other officers charged with the administration or execution of the laws to in any way change, modify or disregard the plain legislative direction. If the legislature representing the supreme will of the people, in passing laws, have erred by fixing inadequate compensation for the proper performance of official duty, then the people and the government must, to a degree, suffer until the laws are modified by properly constituted authority; but far better that this should be the result, than that the law be disregarded, set aside and trampled underfoot by those whose duty it is made to respect and enforce it. Were I to suggest a means to evade the law or encourage you to violate its plain mandates, I should violate my oath of office and be guilty of malfeasance; and were you so to do, you would be in identically the same position and responsible on your official bonds for all moneys by you authorized to be paid from the county treasury in disregard of legislative direction.

Your county assessor was elected, presumably, with full knowledge of the work, duties and compensation of the office, and the maximum compensation allowed his deputies, and the fact that he would be required to execute and file an oath of office and official bond. The deputies are charged with a knowledge of the law fixing their salaries, and the only remedy I now see available, in the event they refuse to perform the work and duties devolving upon them, is for the assessor to get others in their place and stead. I cannot think that conditions are now such, that men cannot be secured to perform this work for the maximum compensation by law prescribed. The official who is in direct charge and responsible for the performance of the duties of the office must do the best he can to faithfully and efficiently discharge his duty, and such is the purpose and requirement of an official bond. In this connection I may further state that one or many violations of

the law do not justify a continuance thereof to any degree, so that the fact by you made to appear that the law has, in Silver Bow County, been violated in the past is certainly no excuse or justification for its continuance. There is a way, and but one way, to handle a situation of this kind, and that is amendment of the law. I believe in the honesty and integrity of you gentlemen, and feel and think that you are disposed and determined to give the people of Silver Bow County an honest and business like administration, and my remarks herein contained are not, in any degree, intended to discourage you or reflect upon your conduct, but rather to strengthen and encourage you in obedience to the law and a continuance of the good work which you have commenced. The spirit by you evinced in openly stating the proposition, inviting discussion thereof, and seeking counsel thereon, bespeaks your manhood and honesty of purpose, and I shall be only too glad to lend my assistance, at any time, to aid you in the performance of your duty in securing compliance with and enforcement of the law.

In this connection I desire further to say that I am much surprised at the statement made to you by your county attorney to the effect that I was looking for opportunity to embarrass him, and I assure you that such a thought has been most foreign to my mind. I have been pleased to see him evince a disposition to adhere to and enforce the law, and this has been a source of comfort and satisfaction to my office. I have never, by word or deed, interfered with, or attempted to interfere with, the county attorney's administration, and his remarks must have been made without consideration or reflection.

I return you herewith, the statement and opinion hereinabove referred to which you left for my consideration.

With personal regards and best wishes, I remain,

Sincerely yours,

ALBERT J. GALEN,

Attorney General.