

Deputies, Salary of. Salary, of Deputies.

Counties of the first, second, third, fourth and fifth classes must pay deputies the compensation fixed by House Bill 202. In counties of the sixth, seventh and eighth classes the board of county commissioners may exercise a discretion in fixing the salary at any amount equal to or less than that prescribed by House Bill 202.

Helena, Montana, March 13, 1909.

Hon. O. D. Gray, County Attorney, Chouteau, Montana.

Dear Sir:

Your favor of March 10, 1909, submitting to this office for opinion a question as to whether counties must pay deputy officials the annual compensation mentioned in House Bill 202, amending Section 3118 of the Revised Codes, is received. In answer thereto I advise you that House Bill 202 fixes the salaries of deputies in counties of the first, second, third, fourth and fifth classes, over which salaries of regular deputies the county commissioners may exercise no discretion. This appears to be the intention of the legislature, in view of the fact that counties of the sixth, seventh and eighth classes are in the same position with regard to the payment of salaries of deputies as they were before this act was passed, except that the maximum is raised in all cases, thus leaving with the county commissioners a discretion in the amount of salary to be paid deputies in counties of the three classes last above mentioned. This view is further sustained by the fact that the last paragraph of Section 1 of House Bill 202 was amended to include counties of the sixth, seventh, and eighth classes, and the salaries of deputies fixed at "not to exceed" the sum named therein.

The fact that the legislature amended this bill in such a manner as to give the county commissioners discretion in fixing the salaries of deputies in sixth, seventh and eighth class counties would strongly indicate that they intended to restrict that discretion in the higher class counties and fix the salary by law.

I do not know whether you have a correct copy of the bill as amended. In fact, in our office it was necessary for us to correct the printed copy from the enrolled bill found in the office of the Secretary of State. However, the amendments which I have mentioned above are the only amendments made to the bill.

You also ask my opinion as to whether or not counties are compelled by this bill to pay the salary fixed by House Bill 202 in cases where the Board of County Commissioners authorizes the employment of deputies in excess of the number allowed by Section 3119, as provided for by Section 3123. I confirm your opinion that House Bill 202 does not repeal that portion of Section 3123 which gives the Board of County Commissioners the power to fix the salaries of such extra deputies as in their discretion they may allow.

I do not know the classification of Teton County, but in the event it is a county of the sixth, seventh or eighth class, it is my opinion that House Bill 202, as finally passed, would not affect that county.

Very truly yours,

ALBERT J. GALEN,

Attorney General.