

**Sheriffs, Deputies of. Deputy Sheriffs, Hours of Labor and Number. Jailors, Number and Hours of Labor. Board of County Commissioners, Authority to Appoint Extra Deputies.**

1. The law does not limit the hours of labor of deputy sheriffs, except as to those who act as jailors, who are limited to eight hours per day.

2. Deputy sheriffs who do not act as jailors receive \$1500.00 per year, and those who act as jailors receive not exceeding \$90.00 per month.

3. The Board of County Commissioners has the authority to authorize the appointment of extra deputies when the public service demands such appointment.

Helena, Montana, March 25, 1909.

Chairman, Board of County Commissioners, Helena, Montana.

Dear Sir:

I am in receipt of a letter from the County Clerk asking, by direction of the board, for an opinion of this office:

"On House Bill No. 335 and Senate Bill No. 120, passed by the last legislative assembly of the State of Montana in relation to,

1. Hours of deputy sheriffs.
2. Compensation of deputy sheriffs."

To these questions we add the third question:

3. Has the board the authority to authorize the employment of one jailor in excess of the maximum number allowed by Senate Bill No. 120.

1. House Bill No. 335 was approved March 5, 1909, and became a law that date, except as to section one thereof, which does not take effect until April 1, 1909. The Bill by its title and provisions contains in section one thereof an original enactment fixing the hours of labor for jailors in counties of the first, second and third class, excepting in cases of emergency, at the period of eight hours, and also in section two of said bill contains an amendment of section 3119 of the Revised Codes. Section one of the act, which makes provision for the hours of labor for jailors, takes effect on the first day of April, 1909, and will be in full force and effect from that time and applicable to counties of the first, second and third class, applies only to the deputy sheriffs who act as jailors. Section two of the act, which amends Section 3119, Revised Codes, relating to the number of deputy sheriffs, is wholly inoperative because of the later amendment of said Section 3119 by Senate Bill No. 120, which was approved and became effective as a law on March 8, 1909. This Senate Bill, being the later enactment, must govern.

1. Lewis-Sutherland Stat. Const. Sec. 180;  
Davis v. Whidden, 117 Cal. 618, 49 Pac. 766;  
Ottman v. Hoffman, 28 N. Y. Supp. 28;  
State v. Halliday, 57 N. E. 1097.

2. House Bill No. 202, approved March 6, 1909, amends Section 3118, Revised Codes of Montana, in so far as said section relates to the salaries of deputy sheriffs in counties of the first, second and third class, by striking out the word "maximum" and the words "not to exceed," and fixes the salary of deputy sheriffs in counties of the second and third class at \$1,500.00 per annum. The striking out of the words "maximum"

and "not to exceed" from the code section has the effect of depriving the Board of County Commissioners of the authority to decrease the salary paid to deputy sheriffs or to fix it at any other sum than that named in the law, to-wit: \$1,500.00 per annum. Hence, deputy sheriffs, other than those who act as jailors, are entitled to receive the sum of \$1,500.00 per annum from and after March 6, 1909. But, said Senate Bill No. 120, which is also a later enactment than House Bill No. 202, provides that in counties of the third and fourth class the sheriff may appoint one under-sheriff and two deputies, and in addition thereto may appoint two deputies who shall act as jailors, and fixes the salary of those who act as jailors as not to exceed \$90.00 per month. Hence, the two deputies appointed by the sheriff who act as jailors receive as compensation the sum of \$90.00 per month, unless the board fixes their compensation at some lesser amount, while the other deputies receive the compensation fixed by House Bill No. 202, which is \$125.00 per month.

3. House Bill No. 335 by fixing the hours of the jailors work at "eight hours in any twenty-four" necessarily requires three jailors, if the board deems it advisable to keep a jailor on duty at all hours of the twenty-four, while Senate Bill No. 120 fixes the number of deputies who may act as jailors at two. However, under the provisions of Section 3123, of the Revised Codes, the Board of County Commissioners has the authority to increase the number of deputies if in the judgment of the board the public interest demand such action. Hence, under this latter section the board has the authority to appoint an extra jailor, and in case such extra jailor is appointed the board must fix his compensation, which shall not exceed the sum of \$90.00 per month. The authority of the board with reference to the increase and decrease of deputies in the interest of the public service is discussed by the supreme court in

Hogan v. Cascade Co., 36 Mont. 183.

To summarize:

1. There is no limit to the hours of deputy sheriffs who do not act as jailors, but deputy sheriffs who act as jailors are within the eight hour limit, as provided in said House Bill No. 335, from and after the first day of April, 1909.

2. The compensation of deputy sheriffs, other than those who act as jailors, is \$125.00 per month, while the compensation of deputy sheriffs who act as jailors, unless fixed a a lesser amount by the Board of County Commissioners, is \$90.00 per month.

3. The Board of County Commissioners has the authority to increase or decrease the maximum number of deputies or jailors named in Senate Bill No. 120 when in the judgment of the board such action on their part is necessary for the protection of the public interests. In case the board authorizes the appointment of more deputies than the number fixed by Senate Bill No. 120, it may, under the provisions of said Section 3123, Revised Codes, fix the salary of such additional deputies, which shall not exceed the maximum allowed by law; that is, \$125.00 per month for

deputies who do not act as jailors and \$90.00 per month for deputies who do act as jailors.

Yours very truly,

ALBERT J. GALEN,

Attorney General.

Note.—The above opinion is modified as to jailors salary in 106 Pac. Rep. 362.