

Deputies, Salary of. Salary, Amount of. Power of Board, to Fix Salaries.

Chapter 85, laws 1909, fixes the salaries of deputies in counties of the fourth class, and it takes from the board the discretionary power of changing the amount named in the law, except as to deputy sheriffs who act as jailors, and to extra deputies selected under the authority conferred by Section 3123, Revised Codes.

Helena, Montana, April 12, 1909.

Hon. Board of County Commissioners, Flathead County, Kalispell, Montana.

Gentlemen:

I am in receipt of a letter from Honorable C. T. Young, as Clerk of Flathead County, writing on behalf of your Honorable Board, in relation to House Bill No. 202, passed by the Eleventh Legislative Assembly of the State of Montana, as follows:

"Flathead County is a fourth class county. Would this bill make it mandatory on the commissioners to pay the deputies \$125.00 per month?"

Under the provisions of said House Bill No. 202 (Chapter 85, Laws 1909) the salary of the deputy sheriffs, deputy clerks and deputy clerks of the district court are fixed at \$1,500.00 per annum. This bill 202 amends Section 3118 of the Revised Codes by striking out the word "maximum" and the words "not to exceed," as the same appear in the original section, so that in the section, as amended, the commissioners have no authority either to increase or decrease the compensation of regular deputies. But, if under the provisions of Section 3123 of the Revised Codes, the commissioners should find it advisable to authorize the appointment of extra deputies they still have the authority to fix the salary of such extra deputies at any amount not exceeding \$125.00 per month. Said bill 202 is, so far as the same relates to deputy sheriffs who act as jailors, amended by the later bill, known as Senate Bill No. 120, (Chapter 119) which fixes the salaries of the deputy sheriffs who act as jailors at not to exceed \$90.00 per month. The Board of County Commissioners' authority to fix the salary of deputy sheriffs who act as jailors is restored by said Senate Bill No. 120, so that the board may fix the salary of such deputies at any amount not to exceed \$90.00 per month.

The authority of the board over such matters is discussed by the Supreme Court in,

Hogan v. Cascade Co. 36 Mont. 185.

Very truly yours,

ALBERT J. GALEN,

Attorney General.

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