

**Salaries—Deputy County Officers—Maximum and Minimum.**

Under Chapter 222, Session Laws of 1919, a certain definite salary is fixed for deputies, and the county commissioners have no authority to name the salary of a deputy above the minimum provided therein.

June 10th, 1919.

Mr. G. P. Peterson, Chairman,  
Board of County Commissioners,  
Missoula, Montana.

Dear Sir:

I am in receipt of your letter of recent date submitting for my opinion the following:

“We would like your opinion on the provisions of Senate Bill No. 64, fixing the salaries and compensation of deputies in county offices. Does this bill allow the board of county commissioners to fix the salaries of the deputies at any amount they see fit above the minimum amount provided in the bill, and if so, could not the board fix the compensation of the deputies at a larger figure than the elected officer under whom he is working receives?”

The last legislature passed two acts, one, Senate Bill No. 45 with reference to salaries and compensation of county officers, being an amendment of Section 3116, Revised Codes 1907, and the other, Senate Bill No. 64, with reference to the salaries and compensation of deputies in county offices, being an amendment of Section 3118, Revised Codes 1907, as amended by Chapter 85, Session Laws 1909, and by Chapter 132, Session Laws 1911, such acts being Chapters 221 and 222, respectively, Session Laws 1919.

Chapter 222, in fixing the salary and compensation of each deputy, uses the words “at a rate of not less than” the amount then being specified, for instance the salary and compensation of the chief deputy county clerk and recorder in a county of the third class is fixed “at a rate of not less than nineteen hundred fifty dollars.”

The sole question is whether it was the intention of the legislature to fix the salary and compensation of each deputy named at the certain definite amount specified in the act, the board of county commissioners

having no authority to either increase or reduce such salary and compensation, or whether it was the intention of the legislature to merely specify a minimum salary and compensation, the board of county commissioners being vested with the power and authority to fix the salary and compensation of any deputy at any amount in excess of such specified amount which they might deem proper.

The Revised Codes of 1907 contained two sections with reference to salaries of deputies in county offices. Section 3118 fixed the maximum salaries to be paid such deputies, the words used being "maximum annual compensation" and "not to exceed" the amount specified, while Section 3136, by implication, authorized the board to fix the salaries of deputies at any amount not exceeding the amounts specified in Section 3118.

In 1909 Section 3118 was amended by Chapter 85, Session Laws 1909 and by such amended the words "maximum" and "not to exceed" were omitted, so that it was clearly the intention of the legislature to provide for the payment to deputies of the specific salaries named in such chapter, the board of county commissioners having no power or authority to fix such salaries at either a greater or less amount than those specified in such chapter. In 1911 Section 3118 was again amended by Chapter 132, Session Laws, but this amendment, like the amendment of 1909, fixed the salary of each deputy at a certain definite amount, such amount being both the maximum and minimum amount.

It has been held that when the words "not less than" are used and a definite amount specified, such amount is both the maximum and minimum amount, it being the intention of the legislature that only that amount is meant, no greater and no less. *Stimpson vs. Pond* Fed. Case No. 13455, 23 Fed. Cases 101; *Town of Central v. Madden* (So. Car.) 61 SE 1029. While it has also been said that the words "not less than" are sometimes synonymous with the words "not exceeding." 2 *Bouvier's Law. Dict.* under word "less," pg. 1929.

Section 3116, Revised Codes 1907, fixed the salary of the sheriff in a county of the second class at \$3500.00 a year, while such Section as amended by Chapter 121, Session Laws 1919, fixes the salary of the sheriff in a county of the second class at \$3,500.00 a year. If the words "at a rate of not less than," as used in Chapter 222, Session Laws 1919, in connection with the salary of the under sheriff in a county of the second class, are to be given their literal meaning, so that the amount of salary, \$1950.00 a year, is to be taken as the minimum amount the board of county commissioners having the power and authority to allow such undersheriff a salary in any amount in excess thereof, the board of county commissioners may fix the salary of such undersheriff at the same amount as the salary paid the sheriff, \$3500.00, or they may fix it at \$5,000.00 or at \$9,000.00, or at any other amount, there being no limitation whatever as to the amount. It seems inconceivable that such could have been the intention of the legislature, and I do not believe such was the intention.

I am, therefore, of the opinion that it was the intention of the legislature, in Chapter 222, Session Laws 1919, to fix a certain definite salary for each deputy therein named, such amount being intended to be both the maximum and minimum salary to be paid, and that the board of county

commissioners has no power or authority to fix the salary of any deputy named therein at any amount either in excess of or less than the salary specified for such deputy in such chapter.

Respectfully,

S. C. FORD,

Attorney General.