

Salary of Deputy County Attorney—County Commissioners Cannot Increase or Diminish Salary Fixed by Legislature.

A deputy county attorney is not a constitutional officer and therefore his salary can be increased or diminished during his term of office.

The county commissioners cannot increase or diminish the salary fixed by the legislature for a deputy county attorney.

June 28, 1920.

Mr. Stewart McConochie,
County Attorney,
Lewiston, Montana.

Dear Sir:

I have your letter submitting for my opinion the following questions:

First: Is the Chief Deputy County Attorney of a second or third class county, whose appointment and acceptance of office took place prior to the enactment of the 1919 session laws, entitled to the salary of \$2,100.00 per annum, as provided by Session Laws 1919, Chapter 222, page 546?

Second: Can the Board of County Commissioners allow a higher salary than \$2,100.00 to the Chief Deputy and \$1,800 to the Deputy, if the board finds it expedient to make such allowance? If so, what would be the maximum that can be allowed in each instance?

In answer to your first question you are advised that the chief deputy attorney is entitled to the salary of \$2,100.00 fixed by Chapter 222, Session Laws 1919. The office of chief deputy county attorney is not a constitutional office, but is one created solely by legislative enactment, consequently the constitutional prohibition against the increasing or diminishing of salary or compensation during the term of office has no application, and the legislature may abolish the office, change the duties thereof or increase or diminish the salary or compensation at any time.

In answer to your second question I have heretofore held that the amount of salary specified in Chapter 222, Session Laws 1919, was intended by the legislature to be the specific definite amount, and that the board of county commissioners cannot either increase or diminish the salary above or below the amount therein specified. Otherwise there would be no limitation on the amount which might be paid, and it certainly was not the intention of the legislature to permit the board of county commissioners to pay any salary to a deputy which the board might fix, and which might be largely in excess of the amount paid to the principal officer.

Respectfully,

S. C. FORD,

Attorney General.