

**Salaries—County Officers—Deputies — Garfield County
—Constitutional and Statutory Officers.**

The bill creating Garfield county becoming a law prior to Chapter 221, Session Laws of 1919, which permits an increase in salaries of county officers, the officers thereof are not entitled to compensation under said Chapter 221.

Deputies being statutory officers are entitled to the compensation as provided by Chapter 221.

April 8th, 1919.

Mr. John J. Cavan,
County Attorney,
Jordan, Montana.

Dear Sir:

I am in receipt of your letter of recent date asking for an opinion regarding the application of Senate Bill No. 45 and Substitute for Senate Bill No. 64 to Garfield County.

Garfield County was created by House Bill No. 3 of the Sixteenth Legislative Assembly, (Chapter 4, Session Laws of 1919), becoming a law on February 7, 1919, by reason of having remained in the hands of the Governor for five days without action thereon, the legislature being in session. (Section 13 of said bill names and designates certain persons as officers of such county, which Section 14 provides that such officers shall receive the same salaries, compensation and emoluments as are provided by law for officers of counties of the seventh class. Section 18 provides that such bill "shall take effect from and after the first day of April, 1919."

Senate Bill 45 of the Sixteenth Legislative Assembly (Chap. 221, Session Laws of 1919) was approved and became a law on March 14th, 1919, and amends Section 3116, Revised Codes of 1907, as theretofore amended by Chapter 112, Session Laws of 1913, such section fixing the salaries and compensation allowed county officers.

Substitute for Senate Bill No. 64 of the Sixteenth Legislative Assembly (Chapter 222, Session Laws of 1919) was approved and became a law on March 6th, 1919, and amends Sections 3118, Revised Codes of

1907, as theretofore amended by Chapter 132, Session Laws of 1911, such section fixing the salaries and compensation allowed deputies and assistants to county officers.

It will be seen that at the date when House Bill No. 3 creating Garfield County became a law the salaries and compensation of all county officers were fixed by Section 3116 as amended by Chapter 112, Session Laws of 1913, but that before such bill went into effect, April 1st, 1919, Section 3116 had been amended by Chapter 221, Session Laws of 1919.

The question for determination is whether the county officers of Garfield County are entitled to the salaries and compensation fixed by Section 3116 as amended by Chapter 112, Session Laws of 1913, or as fixed by said Section 3116 as amended by Senate Bill No. 45, (Chapter 221, Session Laws of 1919.)

At the time the bill creating Garfield County was passed by the Legislature and transmitted to the Governor the salaries and compensation of county officers were fixed and controlled by Section 3116 as amended by Chapter 112, Session Laws of 1913, and unquestionably the legislature intended that the officers of such county should receive the same compensation and salaries as county officers of other counties of the same class were then receiving and this intention seems to be clearly expressed in Section 14 of the bill.

Again if the bill creating Garfield County had taken effect immediately upon its becoming a law, and, instead of naming and designating the officers in the bill, had provided for their nomination and election, and they had been nominated and elected before Senate Bill No. 45 became a law, there could be no question but what their salaries and compensation would be controlled by Section 3116 as amended by Chapter 112, Session Laws of 1913, and that the provisions of Senate Bill No. 45 would not be applicable to such salaries and compensation even though they had not actually qualified as such officers until after Senate Bill No. 45 became a law. And it would seem reasonable to conclude that the naming and designating of the officers in the bill was equivalent to and had exactly the same effect as a nomination and election would have had.

I am, therefore, of the opinion that the county officers of Garfield County are entitled to the salaries and compensation provided for by Section 3116 as amended by Chapter 112, Session Laws of 1913, and not as provided in said Section 3116 as amended by Senate Bill No. 45, (Chapter 221, Session Laws of 1919).

Deputy and assistant county officers are not Constitutional officers but are statutory officers and their salaries and compensation may be increased or decreased by the legislature at any time, and such increases or decreases by the legislature at any time, and such increases or decreases take effect immediately. Consequently the salaries

and compensation of deputy and assistant county officers of Garfield County are controlled by Section 3118 as amended by Substitute for Senate Bill No. 64 (Chapter 222, Session Laws of 1919).

Respectfully,

S. C. FORD,

Attorney General.