

**County Commissioners — Sheriff — County Jail — Residence.**

The County Commissioners have no authority to permit the Sheriff to occupy a part of the county jail as his residence rent free.

Board of County Commissioners,  
Baker, Montana.

Gentlemen:

You have requested my opinion as to whether the Board of County Commissioners has the legal right to permit the Sheriff to use as a residence, rent free, a part of the county jail, and to furnish light, fuel and water for the same, free of charge.

By Subdivision 9 of Section 4465, Revised Codes of 1921, the County Commissioners are empowered to provide a jail and other county buildings.

In Vol. 8, Opinions Attorney General, page 48, it was held that there is no law authorizing a Board of County Commissioners to furnish a residence for the Sheriff. There is no question that the County Commissioners have no authority to furnish a residence for the Sheriff as such. He is no more entitled to be furnished a residence for his family, rent free, than any other county officer. If unauthorized to furnish a residence the Commissioners are equally unauthorized to furnish water, heat, or light for a residence for the Sheriff.

The Sheriff's salary is fixed by Section 4867, Revised Codes of 1921, in addition to which he is allowed certain fees fixed by other sections of the codes, and this salary and these fees constitute the whole compensation to which a Sheriff is entitled.

Section 31, Article V, of the Constitution, prohibits the increasing or diminishing of the salary or emolument of any officer after his election or appointment. If a Board of County Commissioners should attempt to pay to the Sheriff \$50.00 a month to be used by him in paying rent for a residence for his family and for water, heat and light there could be no question whatever but that this would be increasing his salary or emolument in violation of this constitutional provision. When a constitutional or statutory provision prohibits an act being done directly it cannot be done indirectly. If a Board of County Commissioners instead of paying the Sheriff \$50.00 a month to be used by him in paying rent for a residence for his family, and for water, heat and light, furnishes his family with a residence or with residence quarters in the jail and with water, heat and light, for which he would otherwise be compelled to pay \$50.00 a month, this is doing indirectly the very thing which the Constitution forbids being done directly.

It is, therefore, my opinion that the Board of County Commissioners is without authority to permit the Sheriff to occupy a part of the county jail as his residence, rent free, and is without authority to furnish light, fuel or water for the Sheriff, free of charge.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.