

**County Commissioners — Officers—Deputies—Assistants—Salaries—Employment.**

The county commissioners have the power to fix the salaries of all deputies but in fixing the salaries of regular deputies they may not fix them at less than the minimum provided in section 4873, R. C. M. 1921, nor more than eighty per cent of the salary of the officer under whom such deputy is serving.

The county commissioners have the power to fix and determine the number of deputies and assistants for county officers except in the case of the under sheriff and may regulate the employment of such deputies.

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County Attorney,  
Thompson Falls, Montana.

February 26, 1925.

My dear Mr. Alvord:

You have requested an opinion as to the authority and power of the board of county commissioners in a county of the sixth class:

1st. To fix the salary of any deputy or assistant.

2nd. To fix and determine the number of deputies therein even though one of such deputies is provided for by law.

3rd. To regulate the employment of this one deputy according to work, in discontinuing or employing the deputy whenever it deems necessary.

Section 4873, R. C. M. 1921, provides for the compensation allowed deputies and assistants of counties of the several classes and in an opinion of former Attorney General Rankin, (Vol. 9, opinions of attorney general, page 365) it was held that under the authority vested in it by section 4874, R. C. M. 1921, the board of county commissioners could fix the salary of extra deputies but could not reduce the salaries of regular deputies below the salary named in section 4873. This opinion was based upon the decision of the supreme court in the case of *Modesitt vs. Flat-head county*, 57 Mont. 216.

It is true that since these decisions section 4874 has been amended by chapter 82, session laws of 1923, by adding thereto the following:

“Provided, the salary of no deputy or assistant shall be more than 80 per cent of the officer under whom such deputy or assistant is serving, unless otherwise provided by law.”

However, I do not see that this amendment has increased the power of the board of commissioners so as to authorize it to fix the salary of a regular deputy at less than that provided for in section 4873 with the words "unless otherwise provided by law" still governing, and the board of county commissioners must fix the salary of regular deputies at not less than the salary named in section 4873 and not to exceed 80 per cent of the salary of the officer under whom such deputy is serving, unless otherwise provided by law.

In regard to your second question section 4874 formerly provided in part as follows:

"Said boards of county commissioners shall likewise have the power to fix and determine the number of all deputy county officers, provided, however, that the number of said deputies shall not be greater than the maximum fixed by law."

This section was amended by chapter 82, session laws of 1923, to read:

"Said board of county commissioners shall likewise have the power to fix and determine the number of deputy county officers and allow to several county officers a greater or less number of deputies or assistants, than the maximum number allowed by law, when in the judgment of the board of county commissioners such greater or less number of deputies is or is not needed for the faithful and prompt discharge of the duties of any county office."

Thus, by this amendment, the board of county commissioners is not only given the power to fix the number of deputies up to the maximum fixed by law but may exceed this number when in its judgment the duties of the particular office require it, it being clearly the intention of the legislature to give the board of county commissioners the power and authority to determine how many deputies or assistants shall be employed in any county office for the purpose of securing the prompt and efficient performance of all duties thereto appertaining rather than the employment of these deputies from the viewpoint of political expediency. This being the case, it necessarily follows, as stated in the attorney general's opinion above mentioned that the board of county commissioners is given the power to fix and determine the number of deputies for the various county offices, and this means that it may reduce the number below the number named in the statute and in its discretion may abolish all deputies in case the work of any office does not require the services of a deputy. However, this does not apply to any under-sheriff as this appointment is made under a special statute. (Section 4775, R. C. M. 1921.)

It is, therefore, my opinion that the board of county commissioners has the power to fix the salaries of all deputies but in fixing the salaries of regular deputies the salary may not be less than the salary provided by section 4873 and must not exceed 80 per cent of the salary of the officer under whom such deputy is serving and that the board of county commissioners further has the power to fix and determine the number

of deputies and assistants for county offices, except that of under-sheriff, even though one of such deputies is provided by law and may regulate the employment of any deputy or deputies as necessity requires.

Very truly yours,

A. H. ANGSTMAN,

First Assistant Attorney General.