

**Officers—Deputies—Assessors—Salaries.**

Deputy assessors appointed under section 4880 R. C. M. 1921 are entitled to \$1650 per year in sixth and seventh class counties. All other deputy assessors are entitled to 80% of the salary of the officer under whom they are serving.

April 13, 1928.

Hugh N. Marron, Esq.,  
County Attorney,  
Wolf Point, Montana.

My dear Mr. Marron:

Your letter and opinion rendered to the board of county commissioners of your county relative to the salary of deputies under various statutory provisions were received. You have included a copy of an opinion by this office, addressed to the chairman of the board of county commissioners of Meagher county and have asked this office to review the opinions as they in some respects are in conflict.

The question submitted to this office, and which we undertook to answer in the opinion referred to, was "what months the county commissioners may allow the county assessors' deputies, and what salaries per month."

The conclusion reached was that a salary of \$137.50 per month should be allowed and that section 4880, which was enacted as section 2, chapter 75, laws of 1905 fixed the number of deputy assessors, in all counties above the third class at one during the months of March to July, inclusive, was modified by chapter 82, session laws of 1923, which permitted the board of county commissioners to fix and determine the number of deputy county officers and allowed a greater or less number of deputy assessors than the maximum number allowed by law, and being a later act controlled section 4880 as far as inconsistent therewith. The inconsistency consists in removing, when the county commissioners so determine, the limitation in section 4880 of the number of deputy assessors that may be employed.

Chapter 82 omitted the limitation contained in section 4874 R. C. M. 1921, which provided "that the number of such deputies shall not be greater than the maximum fixed by law," and it must be presumed that the legislature intended to remove that limitation in omitting it from the section when amended. Chapter 82 also gives the board of county commissioners power to fix compensation of any deputy or assistant under this act, provided the salary for no deputy or assistant shall be more than eighty per cent of the salary of the officer under whom he is serving, unless otherwise provided by law.

Section 4880 was enacted as section 2, chapter 75, of the laws of 1905, and has not been specifically amended. It provides that in counties of the first, second and third classes assessors may be allowed one deputy during the months of March to August, inclusive, and not to exceed two additional deputies at a salary of not to exceed \$100.00 per

month; in counties of the other classes assessors may be allowed one deputy during the months of March to July, inclusive, at a salary of not to exceed \$100.00 per month.

In 1907 section 4878 (section 3123, 1907 code) was enacted as section 1 of chapter 187. This section, which has not been specifically amended, permitted the county commissioners to appoint a greater number of deputies than the maximum fixed by law, and to fix the salary of such deputies at an amount not to exceed the maximum for deputies provided by law.

Section 3118 of the 1907 codes was amended by chapter 85 of the laws of 1909. It was construed by Attorney General Galen in volume 3, Opinions of Attorney General, at pages 57, 64 and 82. The opinion held that as to the counties of the first, second, third, fourth and fifth classes the commissioners may exercise no discretion. This, states the opinion, appears in view of the fact that the sixth, seventh and eighth classes of counties are in the same position with regard to payment of salaries of deputies as they were before the act was passed, except that the salaries are raised in all classes, last above mentioned, and this view is further sustained by reason of the amendment of the last paragraph to include counties of the sixth, seventh, and eighth classes, and the salaries fixed at "not to exceed the sum therein named."

Section 4873 was again amended by chapter 132, laws of 1911, but no change, except generally to increase the salaries of deputies, was made. In 1919 the section was again amended by chapter 222 of the session laws of that year to further increase the salaries of deputies and fix them in all counties below the fifth class "at a rate of not less than", and in the sixth, seventh, and eighth classes changed the words "not to exceed" to "at a rate not less than."

This chapter also added section 2 (now 4874) which gave the board power to fix the compensation of any deputy or assistant under this act. This section (4874) was again amended in such a way as to limit the number of deputies appointed to the maximum fixed by law, and thus amended section 4878 by implication (chapter 204, laws of 1921). It was again amended by chapter 82, laws of 1923. This amendment inserted the words "provided the salary of no deputy or assistant shall be more than 80% of the salary of the officer under whom he is serving, unless otherwise provided by law," and also restored to the board power to fix the number of deputies and assistants at a greater or less number than the maximum fixed by law.

The history of this section has been reviewed for the purpose of showing the various and frequent changes made, and that there are a number of cases in which the acts concerned conflict, and may be deemed amended by later acts.

It is therefore my opinion that when the legislature added to section 4873 the provision for salaries of deputy assessors or assistant assessors "allowed by law", that it had reference to those allowed by the county commissioners under section 4880 in counties of the sixth and seventh classes, for otherwise it has no meaning, since there is no other pro-

vision of law allowing deputy assessors, and to the extent that the salary allowed for such deputies is in excess of the salary of \$100 per month as fixed in 4880, that it amends 4880 in counties in these classes.

Chapter 82, laws of 1923, provides that the salary of no deputy shall be more than eighty per cent of the salary of the officer under whom he is serving, "unless otherwise provided by law," and also provides that the number of deputies may be more or less than the "maximum number allowed by law."

The maximum number of deputy assessors "allowed by law" is fixed by section 4880, and they are, in my opinion, none the less "allowed by law", by reason of the fact that the assessor may not appoint them without the consent of the board of county commissioners. When the commissioners approve their appointment this constitutes the "maximum number allowed by law" just the same as it would have constituted the "maximum fixed by law" as used in the last part of section 4874 before amendment by chapter 82, providing that the number of deputies allowed by the county commissioners "shall not be greater than the maximum fixed by law."

Under chapter 82 the commissioners can appoint additional deputies to the number allowed by law, where necessary for the prompt discharge of the duties of the office, and the salary of all such is eighty per cent of the salary of the assessor, "unless otherwise provided by law," but as no salary is otherwise provided by law as to such excess deputies, they would be entitled to eighty per cent of the salary of the assessor, under whom they were serving. Eighty per cent of \$1500, the salary of an assessor in the seventh class counties, is \$1200 per month, and in sixth class counties would be \$124 per month for deputies in excess of the maximum number allowed by law.

Therefore, the salary of deputy assessors or assistants when appointed under section 4880 is \$1650 per year, and of all other deputy assessors appointed in excess thereof by the board of county commissioners eighty per cent of the salary of the assessor under whom they are serving. While this view gives to deputy assessors, allowed by law, under section 4880, in counties of the seventh class a salary in excess of the assessor's, it seems the only solution consistent with these various provisions. To the extent that the views heretofore expressed are in conflict with those herein stated, they are modified.

Very truly yours,

L. A. FOOT,  
Attorney General.