

Deputies—Officers—Salaries—Undersheriffs—Counties—Clerk of Court.

The maximum salary that can be paid a deputy in counties of the fourth class is 80% of the salary of the officer under whom he is serving. The salary of the clerk of court is not changed by the change of the classification of a county during his term of office.

November 16, 1928.

R. N. Hawkins, Esq.,
Assistant State Examiner,
Helena, Montana.

My dear Mr. Hawkins:

You have submitted to this office for my opinion the following question:

“What is the maximum salary that can be paid the following officials in a county of the fourth class: under-sheriff, deputy sheriff, deputy county clerk, deputy county treasurer, deputy clerk of the district court, deputy county attorney, and deputy county assessor?”

You state that the class of the county was changed in January, 1927, from the third to fourth class, and wish to know whether this would affect the salary of the clerk of the district court who was elected when the county was a county of the third class. The salary of the clerk of the district court would not be changed by reason of the change of classification of the county which affects the salary of deputies. The clerk of the court being a constitutional officer, his salary may not be changed during his term of office.

Answering your question relative to the deputy officers, an under-sheriff is not a deputy; he is appointed by the sheriff (section 4775) and in case of a vacancy in the office of the sheriff he is required to execute the office until a sheriff is elected or appointed (section 4776); his salary is fixed by law and is not subject to change by the board of county commissioners nor is his appointment subject to their approval or disapproval. In a fourth class county his salary is \$1950. The maximum amount that may be paid to the deputy sheriff in a county of the fourth class is \$2250.00. This by reason of the provisions of chapter 82 of the session laws of 1923, whereby the board of county commissioners has the power to fix the compensation allowed any deputy or assistant under this act, provided the salary of no deputy or assistant shall be more than eighty per cent of the salary of the officer under whom such deputy or assistant is serving, unless otherwise provided by law.

The salary of the sheriff in a county of the fourth class is \$2750.00 and eighty per cent of that amount is \$2250.00—the maximum amount that can be paid a deputy sheriff in a county of the fourth class.

By virtue of the same provisions of law the maximum salary payable to a deputy county clerk is \$2,000.00; to a deputy county treasurer \$2,000.00; to a deputy clerk of the district court \$2,000.00; to a deputy county attorney \$2,000.00; and to a deputy county assessor \$2,000.00. There is no provision of law providing a greater amount than eighty per cent of the salary of the officer under whom the deputy is serving in any of the foregoing cases.

Very truly yours,

L. A. FOOT,
Attorney General.