

Deputy County Superintendent of Schools — Clerks — Salaries.

The salary of a deputy county superintendent of schools is fixed by statute at \$125.00 per month. The salary of the clerk in the office of the county superintendent is to be fixed by the board of county commissioners at such amount as they deem reasonable compensation for the duties performed.

C. E. Baker, Esq.,
County Attorney,
Lewistown, Montana.

June 21, 1929.

My dear Mr. Baker:

You have requested my opinion upon the subject of the salary of the deputy county superintendent of schools of Fergus county and of the clerk in the office of the said superintendent.

Section 975 R.C.M. 1921 reads as follows:

“The county superintendent of counties having fifty or more teachers in third-class districts is authorized to appoint one clerk, and the county superintendent of counties having fewer than fifty teachers in third-class districts may, with the permission of the county commissioners, appoint a clerk at a salary to be fixed by the board of county commissioners.

“The county commissioners of counties having not fewer than seventy-five public school teachers in districts of the third-

class shall appoint one deputy, other than the clerk, for every seventy-five teachers in such districts from a list furnished by the county superintendent. Such deputy shall hold a Montana certificate not less in value than a professional grade certificate, and shall be paid a salary of one hundred twenty-five dollars per month and actual traveling expenses."

You state in your letter that there are one hundred thirty-seven school districts and one hundred forty-five rural one-room schools in the county, besides all of the other schools in the cities within the county. I assume, therefore, that the county has at least seventy-five teachers in third-class districts in the county. The above statute is authority, therefore, for the county superintendent of Fergus county to appoint one clerk and a deputy other than the clerk, the salary of the clerk to be fixed by the board of county commissioners, while that of the deputy is fixed by the statute at \$125.00 unless other and subsequent enactments alter the force and effect of this statute.

Section 4873 R.C.M. 1921 fixes the salary of certain deputies and assistants, and this statute has been held to fix the minimum salary which can be allowed deputies and assistants mentioned therein. (*Farrell vs. Yellowstone County*, 68 Mont. 313, 218 Pac. 559). It will be observed that deputy county superintendents and clerks in the office of the county superintendent are not included within the officers mentioned in the statute.

Section 4874 as amended by Chapter 82, Laws of 1923, reads as follows:

"That the boards of county commissioners in the several counties in the state shall have 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; where any deputy or assistant is employed for a period of less than one year the compensation of such deputy or assistant shall be for the time so employed; provided, the rate of such compensation shall not be in excess of the rates now provided for by law for similar deputies or assistants; said boards 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 of 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."

It will be observed that this act legislates upon the subject of the number of deputies and assistants and their compensation, vesting the authority to fix both in the board of county commissioners; provided, however, that the salary of any deputy or assistant allowed by the board shall not exceed 80 per cent of the salary of his principal "unless otherwise provided by law."

In the case of deputies and assistants mentioned in Section 4873, their salary is otherwise provided by law, and the same is true of a deputy county superintendent, as his salary is fixed by Section 975 R.C.M. 1921. at \$125.00 per month. Section 4874 as amended, therefore, has no application to the salary of a deputy county superintendent.

The clerk in the office of the county superintendent is neither a deputy nor an assistant county superintendent. It is an office provided for by Section 975 R.C.M., 1921, and this statute specifically provides for the salary of the clerk to be fixed by the board of county commissioners. If a clerk was a deputy or assistant within the meaning of said Section 4874, R.C.M., 1921, as amended, the limitation of 80 per cent of the principal salary would apply to the salary of the clerk. A clerk being a separate and distinct officer from either a deputy or assistant county superintendent, his salary, while it is to be fixed by the board of county commissioners, is fixed not by virtue of said Section 4874 as amended, but by virtue of said Section 975, and the 80 per cent limitation found in said Section 4874 as amended, has no direct application to the salary of the clerk in the office of the county superintendent.

The board of county commissioners must use its discretion as to what would be a reasonable salary to be paid the clerk, taking into consideration the kind, character and amount of work that is involved in the performance of the duties of the clerk. In view of the fact, however, that the deputy county superintendent's salary is fixed at \$125.00 per month, and as the office of a deputy is by law superior to that of a clerk, a deputy being next in authority to his principal the county commissioners would, no doubt, be justified in taking into consideration the limitation fixed by law upon the salary of the deputy in determining the maximum amount that the board might allow the clerk.

It is therefore my opinion that the salary of the deputy county superintendent is fixed by law at \$125.00 per month, and that the salary of the clerk in the office of the county superintendent is to be fixed by the board of county commissioners at such an amount as it deems reasonable compensation for the duties performed.

Very truly yours,

L. A. FOOT,
Attorney General.