

Deputy Clerk of Court—Salary—Counties—County Commissioners.

A deputy clerk of court in seventh class county, when allowed by board of county commissioners, is entitled to salary of \$1650 per annum.

Mr. Robert E. Purcell,
County Attorney,
Jordan, Montana.

January 27, 1931.

My dear Mr. Purcell:

You have requested an opinion whether the clerk of the district court is entitled to a regular deputy in his office, and, if so, if the deputy is to be paid at the rate of \$1,650 per annum, or whether his salary is to be fixed by the board of county commissioners.

Section 4875, R.C.M. 1921 provides that the whole number of deputies allowed a clerk of the district court must not exceed, in counties of the fifth, sixth, seventh and eighth classes, one; section 4873, R.C.M. 1921 provides that the deputy clerk of the district court shall be paid at the rate of \$1,650 per annum.

While it is true that section 4874, R.C.M. 1921, as amended, gives the board of county commissioners in the several counties of the state power to fix the compensation allowed to any deputy or assistant, providing the salary allowed is not more than eighty per cent of the salary of the officer under whom such deputy or assistant is serving, **unless otherwise provided by law**; in the case of the deputy clerk of the district court his salary is **otherwise provided by law** and is fixed at \$1,650 per annum. It cannot be reduced below this minimum. The board has power under this section to fix and determine the number of deputies and assistants to the county officers and may allow to the several county officers a greater or lesser number of assistants than the maximum allowed by law when in the judgment of the board of county commissioners such greater or lesser number of deputies or assistants is, or is not, needed to faithfully discharge the duties of any county officer. Under this provision the county commissioners could disallow a deputy to the clerk of the court but if one is allowed they may not reduce his salary below the minimum of \$1,650 per annum.

Very truly yours,
L. A. FOOT,
Attorney General.