

Opinion No. 437**County Commissioners—Deputies of
County Officers—Salaries.**

HELD: The minimum salaries for chief deputies and deputies of county officers are fixed by Section 4873, R. C. M., 1921;

Section 4874, R. C. M., 1921, as amended, permits county commissioners to fix salaries of deputies where same are not fixed by law, provided such salaries shall not be fixed at more than 80% of the salary of any officer whose deputy they may be;

Therefore, any salary of any chief deputy or deputy fixed by the county commissioners between these limits is a legal salary.

February 1, 1934.

You inquire as to the maximum salaries for chief deputies, deputies and bookkeeper in the offices of county clerk, county treasurer, county assessor and clerk of the district court in a county previously in the third class, now reduced to the fourth class.

Revised Codes 4873 provides for deputy clerks at a rate of not less than \$1650; for deputies for clerk of court, treasurer and deputy assessor at a rate of not less than \$1600. According to this statute the maximum is not fixed.

Section 4874 Revised Codes, amended by Chapter 82, Laws of Montana, 1923, providing that the county commissioners shall have the right to fix the salaries of deputies, contains the provision that the salary of no deputy shall be in excess of eighty per cent of the salary of the officer. Section 4873 fixes the minimum salaries of these officers; it does not fix the maximum.

Section 4874, as amended, permits the county commissioners to fix the salaries of deputies where same is not fixed by law. As only the minimum is fixed by law, the salary of these deputies is not fixed by law. The only limitation which appears in 4874, as amended, as to regular deputies is that their salary shall not be more than eighty per cent of the salary of any officer whose deputy they may be.

Therefore, if the commissioners have fixed the salary of these deputies and bookkeeper at \$130 per month and the same does not exceed eighty per cent of the officer's salary, I can not see

that either the commissioners, the officer, or the deputy who has fixed or received these salaries has violated any statute.

This opinion agrees and may be read in connection with 12 Attorney's General Opinions, 377, and 11 Attorney's General Opinions, 113.

Your office may have reached a different conclusion on this point. Such conclusion could readily be reached based upon dicta in the case of *Modesitt v. Flathead County*, 57 Mont. 216, an opinion of the Attorney General prior to the enactment of Chapter 82, Laws of 1923, 8 Attorney General's Opinions, 168, and on dicta in certain other more recent opinions of the Attorney General's office where this particular question was not directly submitted.

When we consider this question directly and base our opinion solely upon the statutes to be construed and consider only what was actually decided by the Supreme Court, we are forced to the conclusion herein reached.