

"Section 4873, R. C. M., 1935. The annual compensation allowed to any deputy \* \* \* \* as follows:

"Counties of the first class, counties of the fourth and fifth classes, counties of the sixth and seventh classes \* \* \* \* deputy clerks and recorder at a rate of not less than \$1650.00."

This section provides not only the maximum wage for deputy clerks in the recorder's office, but the minimum as well. The words of the statute, "Not less," are clear and explicit and particularly so in fixing the minimum salary to be paid.

Section 15, R.C.M., 1935, "Words and phrases used in the Codes or other statutes of Montana are construed according to the context, and the approved usage of the language; but technical words and phrases and such others as have acquired a peculiar and appropriate meaning in law, are defined in the succeeding section, as amended, are to be construed according to such peculiar and appropriate meaning or definition."

Stimpson v. Pond, Federal case No. 13455, 23 Federal Cases, 101.

Town of Central vs. Madden, 61 S. E. 1029. 9 Attorney General Reports, page 365. 12 Attorney General Reports, page 99. 15 Attorney General Reports, page 180.

In the case of Modesitt against Flathead County, 57 Montana, 216, the court said in part:

"The annual compensation allowed to any deputy or assistant as follows \* \* \*. Counties of the fourth and fifth classes \* \* \*. Deputy treasurer and deputy assessor allowed by law at a rate of not less than one thousand, six hundred and fifty dollars. \* \* \*"  
 "As to the former (referring to the above quoted section), the board cannot decrease the compensation fixed by Section 1."

Second question: The minimum and maximum wage for deputy clerk and recorder having been fixed by law, it is impossible for the county, acting through its Board of County Commissioners, to either decrease or increase the wage. If the Board were able to do so in any manner whatsoever, it would be nullifying the law and invading the province of the legislature.

Opinion No. 15.

Salaries—Deputies—County Commissioners.

HELD: County commissioners cannot fix salary of deputy clerk and recorder at a less amount than that provided by statute.

A deputy county clerk and recorder cannot waive her right to a reduction of the minimum salary.

January 12, 1937.

Mr. Ward Goble  
 County Attorney  
 Fallon County  
 Baker, Montana.

My dear Mr. Goble:

You have requested an opinion from this office on the following questions.

First: Can the County Commissioners fix the salary of a deputy county clerk and recorder, at a less amount than that fixed by statute?

Second: Is a waiver in writing, made by a deputy clerk and recorder of a part of the statutory salary, legal and binding upon the maker thereof?

In Hicks against Stillwater County, 84, Mont. 38, at page 50, the court said:

"As plaintiff's compensation was fixed by statute, it could only be changed in like manner, and the acceptance of less than the amount due on liquidated demands and under the circumstances does not constitute an accord and satisfaction, nor stop plaintiff from claiming the balance due."

When the employee or deputy clerk and recorder filed her waiver with the county, agreeing to accept a lesser wage than the minimum wage provided by law, she entered into a contract with the county.

"A contract is an agreement to do or not to do a certain thing." Section 7467, "It is essential to the existence of a contract that there should be 1. A lawful object."

Section 7499: "The object of the contract must be lawful when the contract is made. \* \* \*"

Section 7501. "Where a contract has but a single object, and such object is unlawful, whether in whole or in part, \* \* \*, the entire contract is void."

Our legislature has declared it in violation of the law for a candidate for public office to promise the electorate that he will accept a lesser salary than that provided by law, and in exacting such legislation, it declared such promises or inducements as contrary to public policy. In carrying this principle so declared by the legislature a little further, it should be just as clear that it would be in violation of public policy for an incumbent employee or deputy clerk and recorder, or any other public officer, to agree to accept a less wage than the minimum provided by law.

In your letter, you state, "It has been the custom in this county and I believe other counties of the state, in the interest of economy to make the arrangements which are apparent from the above questions, with the various deputies of county office, and I am therefore asking for your opinion on it."

The legislature has deemed it proper, for the welfare of the general public and all the counties of the state, to fix a minimum standard of living wage

for this class of employees in the respective classes of counties, and by the performance of the law the taxpayers of the county should receive more than efficient and competent service and the "Interests of economy should be enhanced."

It is therefore my opinion that the Board of County Commissioners cannot fix the salary of a deputy county clerk and recorder at a less amount than that fixed by statute, and a waiver in writing made by deputy clerk and recorder, waving a portion of the statutory salary, is neither lawful nor binding upon her, and that the county must pay her the minimum salary provided for by law.