

No. 115

**SALARIES—SHERIFFS—DEPUTY SHERIFFS—
UNDERSHERIFFS**

Held: The Board of County Commissioners shall have the power, under the provisions of Section 4875, Revised Codes of Montana, 1935, to fix the compensation allowed the Undersheriff and Deputy Sheriff, provided the salary of either shall not be more than 80% of the salary of the Sheriff.

May 19, 1941.

Mr. A. T. Hempstead, Chairman
Board of County Commissioners
Powell County
Deer Lodge, Montana

Dear Mr. Hempstead:

You wish to know if it is within the discretion of the Board of County Commissioners to pay more than the minimum salaries allowed undersheriffs and deputy sheriffs in your county when you believe the same to be expedient.

Under the provisions of Section 4873, Revised Codes of Montana, 1935, the salary of an undersheriff in a sixth-class county, is to be paid at the rate of not less than \$1800.00 and a deputy sheriff at a rate of not less than \$1650.00; and under the provisions of Section 4874, Revised Codes

of Montana, 1935, the Board of County Commissioners shall have the power to fix the compensation allowed any deputy or assistant under the Act, provided, however, that 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.

In the case of *Delfelder v. Teton Land and Investment Company*, 24 Pac. (2nd) 702, 704, an undersheriff was defined to be a general deputy. The court in that case said:

“An undersheriff has always, in every county of the State, performed the duties of a deputy, and has always been regarded as qualified to act for the sheriff the same as a deputy. There can be no doubt, we think, that he is simply what has been termed a general deputy, slightly more important than a simple deputy, by reason of the fact that he is qualified and designated by law as the particular deputy who, under certain conditions, shall become the sheriff. *Shirran v. Dallas*, 21 Cal. App. 405, 132 P., 454, 458, 462; *Allen v. Smith*, 12 N. J. Law, 159, 162; *Meyer v. Bishop*, 27 N. J. Eq. 141, 142. See 57 C. J. 730.”

Thus classifying an undersheriff as a general deputy, it is my opinion the Board of County Commissioners has the power, under the provisions of Section 4874, Revised Codes of Montana, 1935, to fix the compensation allowed the undersheriff and deputy, provided the salary of either shall not be more than eighty per centum of the salary of the sheriff.

Sincerely yours,

JOHN W. BONNER
Attorney General