

No. 136

**COUNTY COMMISSIONERS—SALARIES OF DEPUTIES
AND ASSISTANTS TO BE FIXED BY**

Held: The board of county commissioners has the power, under the provisions of Section 4874, Revised Codes of Montana, 1935, to fix the compensation allowed any deputy or assistant under the Act—provided the salary of no deputy or assistant shall be more than 80% of the salary of the officer under whom such deputy or assistant is serving—and is precluded under the provisions of Section 4873 from fixing the compensation allowed such deputy or assistant at a rate less than that provided for in said last named section.

June 4, 1941.

Mr. Bert W. Kronmiller
County Attorney
Big Horn County
Hardin, Montana

Dear Mr. Kronmiller:

You have asked my opinion as to the compensation of the under-sheriff and deputy sheriffs in counties of the seventh class and whether or not the county commissioners have authority under the law to raise or lower the salaries of these officers.

In the case of *Delfelder v. Teton Land and Investment Co.*, 24 Pac. (2nd) 702 (Wyoming), 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 the undersheriff as a general deputy let us proceed to construe the provisions of Sections 4873 and 4874 of the Revised Codes of Montana, 1935.

Section 4873, Revised Codes of Montana, 1935, provides, among other things, the annual compensation allowed to an undersheriff and the deputy sheriff in a county of the seventh class is as follows:

Undersheriff, at a rate not less than \$1800.

Deputy sheriff, at a rate not less than \$1600.

The provisions of this section are mandatory and the board of county commissioners is precluded from fixing the salary of the officers above named at a rate less than the amount specified in said section.

Section 4874, Revised Codes of Montana, 1935, provides among other things:

"The boards of county commissioners in the several counties of 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 80% of the salary of the officer under whom such deputy or assistant is serving, unless otherwise provided by law. . . ."

Therefore, it is my opinion the board of county commissioners has the power to raise the salary of the undersheriff or deputy sheriff, provided the salary of either shall not be raised to more than eighty per cent of the salary of the sheriff, unless said salary is definitely fixed by the provision of Section 4873 (as is the salary of the undersheriff in counties of the seventh class, i. e. \$1800). The board has no power or authority to lower the salary of the undersheriff to a rate less than that provided for in Section 4873.

Sincerely yours,

JOHN W. BONNER
Attorney General