

No. 152

CATTLE SLAUGHTERED—INSPECTION AND MARKING OF HIDES—APPOINTMENT OF DEPUTY SHERIFFS—COUNTY COMMISSIONERS—COMPENSATION OF DEPUTIES AND ASSISTANTS OF COUNTY OFFICERS—DEPUTIES—ASSISTANTS

Held: Deputy sheriff, appointed under Section 3298.18, Revised Codes of Montana, 1935, as amended by Chapter 78, Laws of 1941, performs functions of the sheriff insofar only as they pertain to inspection of hides, etc. He performs no other functions of the sheriff and is therefore limited to the compensation provided for in Section 2 thereof; and, while the board of county commissioners has no power to decrease the compensation of regular deputies of county officers fixed by Section 4873, Revised Codes of Montana, 1935, it has discretion—under Section 4874, Revised Codes of Montana, 1935—to fix the compensation of extra deputies appointed for temporary service at any rate it may deem expedient, provided it does not exceed the rate paid the regular deputies.

June 26, 1941

Mr. Neil D. Heily
County Attorney
Stillwater County
Columbus, Montana

Dear Mr. Heily:

You have submitted the following questions for our consideration:

1. Section 3298.18, Revised Codes of Montana, 1935, as amended by Chapter 78, Laws of 1941, provides, in localities where there is no sheriff or deputy sheriff and where there is need for the inspection of hides of slaughtered cattle, etc., as therein required, a deputy sheriff shall be appointed. It further provides such deputy sheriff shall have the same powers and authority and shall perform the same duties as the sheriff.

What is our interpretation of the section insofar as it pertains to the powers and authority therein granted to such deputy sheriff? Are they limited to the powers and authority of the sheriff, insofar only as they pertain to the inspection of hides, etc., pursuant to

Section 3298.18, as amended, or has he power and authority to perform any function which the sheriff might, under the law perform?

2. In connection with the same problem, you call our attention to the fact Stillwater County is employing a deputy sheriff to preserve order in Absarokee, a town of about 200 population. The deputy's salary amounts to about \$720.00 per year.

Do the commissioners have the right to set the compensation of such deputy at less than \$1650.00 per year without incurring the possibility of having to reimburse such deputy at some future time for the difference?

Section 3298.18, Revised Codes of Montana, 1935, as amended by Chapter 78, Laws of 1941, among other things provides:

"Section 2. In localities where there is no sheriff or deputy sheriff, and where there is need for the inspection herein required, a deputy sheriff shall be appointed, and shall be authorized by the board of county commissioners of the county to make such inspections, and he shall be paid from the appropriate county fund therefor, a fee of not to exceed twenty-five cents (25¢) for each beef hide inspected, and a fee of not to exceed ten cents (10¢) for each veal hide inspected. Such deputy sheriff shall have the same powers and authority, and shall perform the same duties as the sheriff. Except as in this section provided, no fee shall be charged or paid for such inspection. No butcher, meat peddler, or employee of any butcher or meat peddler shall be appointed such deputy sheriff."

Answering question number one, in my opinion the powers and authority granted to a deputy sheriff appointed under Section 2 above are limited to the powers and authority of the sheriff insofar only as they pertain to the inspection of hides, etc., pursuant to the provisions of said Section 3298.18, as amended. He performs no other functions of the sheriff and is therefore limited to the compensation provided for in said Section 2. In other words, the mere naming of such officer as a "deputy sheriff" does not entitle him to the compensation provided for in Section 4873, Revised Codes of Montana, 1935, making the salary of a deputy sheriff of a seventh class county (as is Stillwater) "not less than sixteen hundred fifty dollars."

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

"That the boards of county commissioners in the several counties in 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 eighty per cent of the salary of the officer under whom such deputy or assistant is serving, unless otherwise provided by law; where any deputy or assistant is employed for a period of less than one year the compensation of such deputy or assistant shall be for the time so employed; provided, the rate of such compensation shall not be in excess of the rates now provided for by law for similar deputies or assistants; said boards of county commissioners shall likewise have the power to fix and determine the number of deputy county officers and allow to several county officers a greater or less number of deputies or assistants, than the maximum number allowed by law, when in the judgment of the board of county commissioners of such greater or less number of deputies is or is not needed for the faithful and prompt discharge of the duties of any county office."

Answering question two, it is my opinion that, while the board of county commissioners has no power to decrease the compensation of **regular deputies** of county officers fixed by Section 4873, Revised Codes of Montana, 1935, it has discretion under Section 4874, Revised Codes of

Montana, 1935, to fix the compensatoin of **extra deputies** appointed for temporary service at any rate it may deem expedient, provided it does not exceed the rate paid the regular deputies. (See *Modesitt v. Flathead County*, 57 Mont. 216, 187 Pac. 911.)

Sincerely yours,

JOHN W. BONNER
Attorney General