

No. 71

SHERIFFS—DEPUTY SHERIFFS, Compensation of

Held: Where Deputy Sheriff is discharged from office, he may recover compensation for the time actually served and no longer.

April 5, 1941.

Mr. John D. Stafford
County Attorney
Cascade County
Great Falls, Montana

Attention: Mr. R. J. Nelson, Deputy.

Dear Mr. Stafford:

You state that on January 1, 1941, a deputy sheriff was appointed and subsequently discharged on the sixth day of his service. You request my opinion concerning the right of such person to draw a salary for a full month.

Section 4873 of the Revised Codes of Montana, 1935, provides deputy sheriffs are to be paid at a rate of not less than \$1800.00 per year in counties of the second and third class. Section 4868 provides the salary of the county officers and assistants must be paid monthly. The latter section thus prescribes the time when earned compensation must be paid.

As a general proposition, the power of appointment carries with it the power of removal so that it follows a deputy sheriff holds only during the pleasure of the sheriff.

Morris v. Parks, 145 Ore. 481, 28 Pac. 2d 215;
Murray v. Harris (Tex. Civ. App.). 112 S. W. 2d 1901;
Cronin v. Los Angeles County Civil Service Commission, (Cal.)
236 Pac. 339;

1 Anderson on Sheriffs, Coroners and Constables, Section 85.

A deputy sheriff is entitled to compensation for the actual time he serves, but no longer.

Dillon v. Bicknell, 116 Cal. 111, 47 Pac. 937;
Finley v. Laurens County, 58 S. C. 273, 36 S. E. 588;
Davenport v. Eastland County, 94 Tex. 277; 60 S. W. 243;
Campbell County vs. Trapp, 113 Ky. 119, 67 S. W. 369;
20 C. J. S. 915.

In the case of Dillon v. Bicknell, supra, the following pertinent language is found:

"Therefore the provision fixing the compensation at an annual sum should be construed as fixing the rate of compensation to be paid for the time the officer actually serves. This construction will do exact justice between the preceding and succeeding officers, and not increase the burden to be borne by the people."

I agree with you, therefore, in your opinion the deputy sheriff is entitled to compensation only for the time he actually served.

Sincerely yours,

JOHN W. BONNER
Attorney General