

Opinion No. 15.**Sheriffs—Appointment of Under-Sheriff—Compensation.**

Held: A sheriff in a county of the seventh class—having a population of more than 2,000—may, if he deems it necessary, appoint one under-sheriff at a salary not less than \$1800 per annum, and, in addition, one deputy shall act as jailer at a salary not less than \$1650 per annum, without the authorization or consent of the board of county commissioners.

February 17, 1943.

Honorable R. G. Tyler
Senator of Sheridan County
State Capitol
Helena, Montana

Dear Senator Tyler:

You have requested my opinion on the following questions:

1. Is the sheriff of a seventh class county entitled to an under-sheriff, or only a deputy sheriff?
2. What is the amount of salary to be paid an under-sheriff in a seventh class county?
3. Has the board of county commissioners the authority to disapprove any appointments of under-sheriff made by the sheriff, when the person appointed meets with statutory requirements?

The Twenty-seventh Legislative Assembly of 1941 enacted Chapter 168, Laws of 1941, which prohibits the appointment of any deputy county officer in counties of the seventh class having a population of less than 2000 without the authorization of the board of county commissioners. It gave the county board the right to authorize such appointment and fix the term of service and compensation to be paid such deputy.

I understand, however, your questions concern a county of the seventh class having a population of more than 2000, and hence Chapter 168, Laws of 1941, is not applicable and need not be here considered.

Section 4875, Revised Codes of Montana, 1935, provides the number of deputies allowed the several county

officers and as to seventh class counties provides:

"The whole number of deputies allowed the sheriff is one under-sheriff, and in addition not to exceed the following number of deputies: In counties of the . . . fifth, sixth, seventh and eighth classes, one . . ."

This section further provides:

"The sheriff in counties of the first, second and third classes may appoint two deputies, and in the fourth, fifth, sixth, seventh and eighth classes, one deputy who shall act as jailer and receive the same salary as other deputy sheriffs."

Section 4775, Revised Codes of Montana, 1935, provides:

"The sheriff, as soon as may be after he enters upon the duties of his office, must, except in counties of the seventh and eighth classes, appoint some person under-sheriff to hold during the pleasure of the sheriff. Such under-sheriff has the same powers and duties as a deputy sheriff."

It might appear at first glance that there is a conflict between these provisions of our statute and that one repeals the other. It will be noted, however, there is no direct repeal, and the courts do not favor repeal by implication. The rule is that, where two acts of the legislature deal with the same subject matter, effect must be given to both, if possible. (59 Corpus Juris, pages 904-918. *State v. Quinn*, 40 Mont. 472, 107 Pac. 506; *State v. Bowker*, 63 Mont. 1, 205 Pac. 961.) When these statutes are read and considered together, it cannot be said one is repugnant to the other, but on the contrary effect can be given to both. It therefore follows a sheriff in a county of the seventh class, having a population of more than 2000, may, if he deems necessary, appoint an under-sheriff and one deputy who shall act as jailer and receive the salary of a deputy, either or both, without the consent or authorization of the board of county commissioners. See Opinion Number 30, Volume 16, and Opinion Number 14, Volume 17, Report and Official Opinions of Attorney General.

Section 4873, Revised Codes of Montana, 1935, provides the compensation allowed an under-sheriff in a seventh

class county is not less than \$1800 per annum, and a deputy not less than \$1650 per annum.

It is therefore my opinion a sheriff in a county of the seventh class—having a population of more than 2000—may, if he deems it necessary, appoint one under-sheriff at a salary not less than \$1800 per annum, and in addition, one deputy who shall act as jailer at a salary not less than \$1650 per annum, without the authorization or consent of the board of county commissioners.

Sincerely yours,
R. V. BOTTOMLY
Attorney General