

Dear Mr. Onstad:

I have your letter of March 4, 1943, in regard to the question of amount of salary for a deputy assessor in a county of the seventh class.

Since the rendition of Official Opinion No. 10, Volume 20, under date of January 23, 1943, the legislature has had under consideration and passed an act to amend Section 4880, Revised Codes of Montana, 1935, as amended by Chapter 97, Laws of 1939. House Bill No. 34 is now found in the 1943 Session Laws as Chapter 87. The act was signed by the Governor and became effective February 25, 1943.

Section 4880 was amended to read in part:

"... in counties of all other classes assessors may be allowed one deputy during the months of March, April, May, June and July; **provided, that, under Section one (1) hereof, the commissioners may allow the assessor in any class county a deputy for the month of January, if found to be necessary for the assessment of motor vehicles.**"

Section one of the act amends Section 4874, Revised Codes of Montana, 1935, and reads in part as follows:

"That the board of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant **mentioned in the preceding section**; provided, the salary of no deputy or assistant shall be more than **ninety** per cent of the salary of the officer under whom such deputy or assistant is serving, unless otherwise provided by law . . ."

The remainder of both sections above mentioned reads the same as they do in the 1935 codes and the 1939 amendment of Section 4880, with the exception of the insertion of the word "the" in Section 4874, so as to read, "the several county officers."

It will be seen neither Chapter 97, Laws of 1939, nor Section 4873, Revised Codes of Montana, 1935, controls the question of salary of a deputy assessor in a county of the seventh class. The legislature has seen fit to strike out that portion which this office relied on in Official Opinion No. 10, Volume 20. An examination of Chapter 87, Laws of 1943, shows the question of

#### Opinion No. 19.

**Counties — County Commissioners —  
Assessor — Deputy County Assessor —  
County of the Seventh Class, Salary,  
increase of**

Held: The date of the appointment is the deciding factor in considering whether or not the provisions of Section 31, Article V, Montana Constitution apply to the deputy county assessor in question. The board of county commissioners has the authority under Chapter 87, Laws of 1943, to fix the compensation of a deputy assessor in a county of the seventh class, within the limitation noted in that act. It is further my opinion the increase allowed in Chapter 87, to not more than ninety per cent of the amount of the officer's salary, is prohibited if the appointment of the deputy assessor was made prior to February 25, 1943, the effective date of Chapter 87, Laws of 1943.

March 15, 1943

Mr. Chester E. Onstad  
County Attorney  
Powder River County  
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salary is now in the hands of the board of county commissioners, with the limitation on the amount expressly noted. Section 4873, Revised Codes of Montana, 1935, is the section to which Chapter 87, Laws of 1943, has reference. Section 4873 provided for the annual compensation allowed to any deputy or assistant in the counties. No other conclusion can be reached but that Section one of Chapter 87, Laws of 1943, repeals Section 4873, Revised Codes of Montana, 1935, and places the power of fixing the compensation of deputies and assistants in the board of county commissioners.

Section 31, Article V, of the Montana Constitution, provides an inhibition which must be considered at this point. The section provides in part:

"Except as otherwise provided in this constitution, no law shall extend any term of any public officer, or increase or diminish his salary or emolument after his election or appointment . . ."

Chapter 87, Laws of 1943, went into effect upon the Governor's signature, February 25, 1943. In accordance with the constitutional prohibition, then, if the appointment of the deputy assessor was made prior to February 25, 1943, the constitution forbids the increase in salary to ninety per cent of the principal officer's, for prior to February 25, Section 4874, Revised Codes of Montana, 1935, was in effect, limiting the deputy's salary to eighty per cent of the principal officer's. **If the appointment was made after February 25,** the deputy is entitled to the benefits granted by Chapter 87—that is, not more than ninety per cent of the officer's salary, rather than not more than eighty per cent. **The date of the appointment is the deciding factor in considering whether or not the provisions of Section 31, Article V, Montana Constitution apply to the deputy county assessor in question.**

No further question or questions of constitutional law being raised or necessary for the determination of the question at hand, no opinion is expressed as to other provisions.

It is therefore my opinion the board of county commissioners has the authority under Chapter 87, Laws of 1943, to fix the compensation of a deputy assessor in a county of the seventh class, within the limitation noted in

that act. It is further my opinion the increase allowed in Chapter 87, to not more than ninety per cent of the amount of officer's salary, is prohibited if the appointment of the deputy assessor was made prior to February 25, 1943, the effective date of Chapter 98, Laws of 1943.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General