

Opinion No. 73.**Counties—County Assessor—Deputies and Assistants—Salaries.**

Held: (1) Board of county commissioners should authorize county assessor to appoint such additional deputies and assistants as may be needed for the faithful and prompt discharge of additional duties imposed on county assessor by Chapter 167, Laws of 1943, to serve for such length of time as may be necessary to complete the additional duties.

(2) As to those deputies allowed by law, salary shall not be less than minimum provided by Section 4873, Revised Codes of Montana, 1935, and not more than 90% salary of assessor; as to deputies appointed by permission of board of county commissioners, such board shall fix salary, but not to exceed 90% of salary of officer under whom they serve.

June 21, 1943.

Mr. Sam D. Goza, Chairman
State Board of Equalization
State Capitol
Helena, Montana

Dear Mr. Goza:

Chapter 167, Laws of 1943, amending Section 2156, Revised Codes of Montana, 1935, makes it the duty of the county assessor to add up the valuations, enter the total valuation of each kind of property, and the total valuation of all property on the assessment book, the column of acres to show the total acreage of the county; Chapter 167 also amending Section 2160, Revised Codes of Montana, 1935, makes it the duty of such officer to compute, and enter in a separate money column in the assessment book the respective sums, in dollars and cents, to be paid as a tax on the property therein enumerated, and foot up the column showing the total amount of such taxes, and the columns of total value of property in the county, all of which duties having heretofore been performed by the county clerk.

In connection with these new duties imposed upon the county assessor, you ask my opinion as to the authority of the board of county commissioners to

provide the county assessor with a sufficient force of clerks or assistants to perform these duties, in view of Section 2 of Chapter 87, Laws of 1943, (which section amends Section 4880, Revised Codes of Montana, 1935, and Chapter 97, Laws of 1939), providing definite limitations of the number of deputies allowed to the county assessor, and confining the appointment of such deputies to certain months, except in counties of the first, second and third classes, in which counties the county assessor may have one deputy without limitation as to time.

The question of the number of deputies allowed a county officer under Section 4880, Revised Codes of Montana, 1935, and during its history since original enactment as Section 2 of Chapter 75, Laws of 1905, has been the subject of numerous opinions by this office, as shown by Opinion No. 116, Volume 18, Reports and Official Opinions of Attorney General, from which the following is quoted:

“Every attorney general has had occasion to interpret this section in controversies arising out of various counties as to the number of deputies allowed. Seldom has there been such unanimity of opinion as is shown in the construction of this section and its relation to other sections of the code. It has been uniformly held that the board of county commissioners may permit the appointment of deputies in excess of the number allowed by Section 4880 when in their judgment the duties of the office and the prompt and faithful discharge of the office require it.”

The conclusions set forth in the opinion are justified by the provisions of Section 4874, Revised Codes of Montana, 1935, as amended by Section 1 of Chapter 87, Laws of 1943, and Section 4878, Revised Codes of Montana, 1935, the first section containing the following clause:

“Said boards of county commissioners shall likewise have the power to fix and determine the number of deputy county officers and allow the 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 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."

And the second section (Section 4878) provides:

"The board of county commissioners in each county is hereby authorized to allow the several county officers to appoint a greater number of deputies than the maximum number allowed by law when, in the judgment of the board of county commissioners, such greater number of deputies is needed for the faithful and prompt discharge of the duties of any county office, and to fix the salary of such deputies appointed in excess of the maximum allowed by law; provided, such salary shall not exceed the maximum salary of deputies provided by law."

The reasonable construction to be given these different sections is that the county assessor is permitted to appoint the number of deputies specifically provided by Section 2 of Chapter 87, Laws of 1943, (which is amendatory of Section 4880, Revised Codes of Montana, 1935) without further authority from the board of county commissioners; and as to additional deputies or assistants required for the proper discharge of the duties of the office, the authority and duty is lodged with the board of county commissioners to authorize the appointment of such additional deputies and assistants when in the judgment of the board such greater number is needed for the faithful and prompt discharge of the duties of the office.

It is therefore my opinion, in view of the additional duties imposed on the county assessor, which of necessity require deputies or assistants in addition to those specifically allowed by Section 2 of Chapter 87, Laws of 1943, the board of county commissioners in the various counties should authorize the county assessor to appoint such additional deputies or assistants as may be needed for the faithful and prompt discharge of the additional duties, these deputies or assistants to serve for such length of time as may be necessary to complete the additional duties.

You also ask my opinion as to the proper compensation to be paid deputies and assistants appointed by the county assessor.

In this connection, it is to be noted Section 4880, Revised Codes of Montana, 1935, as amended by Chapter 97, Laws of 1939, provided that in counties of the first, second and third class, the county assessor was allowed one deputy without limitation as to time, and, during certain months, two additional deputies, at a salary not exceeding \$100.00 per month; in counties of all other classes, the county assessor was allowed one deputy during certain months, at a salary not exceeding \$100.00 per month. The amendment made to Section 4880, Revised Codes of Montana, 1935, by Section 2 of Chapter 87, Laws of 1943, omits all reference to the amount of salary allowed these additional deputies.

However, Section 4873, Revised Codes of Montana, 1935, provides the annual salary of certain deputies and assistants of the different county officers, including the county assessor, shall not be less than the amount therein set forth for the different deputies and assistants, while Section 4874, Revised Codes of Montana, 1935, provided that the board of county commissioners shall have the power to fix the compensation allowed any deputy or assistant under the act, with the limitation the salary shall not be more than 80% of the salary of the officer under whom the deputy or assistant is serving; this section being amended by Section 1 of Chapter 87, Laws of 1943, to provide the salary shall not be more than 90% of the salary of the principal officer, and this increase in salary has been held effective and constitutional both as to deputies and assistants appointed before and after effective date, in *Adami v. Board of County Commissioners*, Supreme Court decision, dated June 16, 1943, and not yet reported.

The effect of these provisions is to provide a minimum salary as set forth in Section 4873, Revised Codes of Montana, 1935, with a maximum of 90% of the salary of the principal officer, but the provision as to minimum salary only applies to those deputies or assistants appointed under Section 4880, Revised Codes of Montana, 1935, as amended by Section 2 of Chapter 87, Laws of 1943, without authority from the board of county commissioners, and does not apply to those additional deputies or assistants appointed by the county assessor with the permission of the board of county commissioners

under Section 4874, Revised Codes of Montana, 1935, as amended by Section 1 of Chapter 87, Laws of 1943, and Section 4878, Revised Codes of Montana, 1935. This does not conflict with Opinion No. 19, Volume 20, Official Report and Opinions of Attorney General, in that the minimum salary feature was not considered therein. The maximum salary allowed, however, applies to both classes of deputies or assistants. (Modesitt v. Flathead County, 57 Mont. 216, 187 Pac. 911; Farrell v. Yellowstone County, 68 Mont. 313, 218 Pac. 559.)

It is therefore my opinion that, as to those deputies which the county assessor is allowed to appoint without the consent of the board of county commissioners, the salary of such deputy shall not be less than the minimum amount provided in Section 4873, Revised Codes of Montana, 1935, and not more than 90% of the salary of the county assessor making the appointment; and, as to those deputies and assistants employed by the county assessor with the permission of the board of county commissioners, such board of county commissioners has the authority to fix the salary within its discretion, except the salary can not exceed 90% of the salary of the county assessor under whom they serve.

Sincerely yours,
R. V. BOTTOMLY
Attorney General