

Opinion No. 94**Consolidated County Offices—Salaries—Officers, Deputy County Officers—County Commissioners.**

Held: 1. A deputy serving in a consolidated county office may, in the discretion of the Board of County Commissioners, be compensated for his services at ninety per cent of the salary of the holder of such office if the deputy is in fact performing duties with respect to both of the offices which have been consolidated. If such deputy is employed in such a capacity that he is performing the duties of only one of the individual offices which have been consolidated his compensation may not be based upon that of the holder of the consolidated office.

March 2nd, 1950.

Mr. Arthur C. Erickson
County Attorney
Sheridan County
Plentywood, Montana

Dear Mr. Erickson:

You have requested my opinion as to the salary that may be paid to a deputy in a county office wherein two county offices have been consolidated. The facts you have presented are that the offices of the Clerk and Recorder and the Assessor have been consolidated in Sheridan County and, as is allowed by statute, the salary of the holder of the consolidated office has been set at an amount twenty per cent higher than the highest salary paid to any officer whose duties he is required to perform by reason of such consolidation. You state that in each of the offices there is a deputy and the question has arisen as to whether such deputies may be paid a salary of up to ninety per cent of that received by the holder of the combined offices.

The statutory authority providing for consolidation of county offices is contained in Sections 16-2501 through 16,2507, Revised Codes of Montana, 1947. Section 16-2507, *supra*, provides as follows in part:

"When two or more offices are consolidated under a single officer such officer shall receive as salary an amount to be determined by the Board of County Commissioners of the county, but which amount must not be more than twenty per cent (20%) higher than the highest salary provided by law to be paid to any officer whose duties he is required to perform by reason of such consolidations; . . . and provided further, that where county offices are consolidated as hereinbefore described, that the officer of the consolidated offices shall have any deputies they may appoint who shall be approved by the Board of County Commissioners; and provided further, that the Board of County Commissioners shall determine the number of deputies, stenographers, and clerks the said officers may appoint."

Section 25-603, Revised Codes of Montana, 1947, provides for the compensation to be allowed to deputy and assistant county officers. Section 25-604, Revised Codes of Montana, 1947, allows the Board of County Commissioners to fix such salaries and is as follows in part:

"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 mentioned in the preceding section; provided, the salary of no deputy or assistant shall be more than ninety per cent (90%) of the salary of the officer under whom such deputy or assistant is serving; . . ."

While the above quoted section allows the Board of County Commissioners to fix the compensation of a deputy or assistant at ninety per cent of the salary of the officer under whom such deputy or assistant is serving, the question in the situation you have presented is whether the ninety per cent shall be calculated upon the basis of the salary received by an officer who holds the consolidated office or upon the basis of the salary to be paid to either the assessor or the clerk and recorder if such offices were in existence.

I believe there is no doubt but that the holder of a consolidated office is allowed higher compensation because he has greater responsibilities and must perform duties in excess of those performed by the holders of the individual offices if such offices were not consolidated. From an equitable standpoint it would seem that whether or not a deputy working under the holder of a consolidated office should receive compensation at ninety per cent of the salary paid to such officer depends upon whether or not such deputy is performing duties arising out of combined offices or whether he is in reality a deputy assessor or a deputy clerk and recorder and performs the duties of only one of the consolidated offices. If the deputy is performing duties in each of the offices which have been consolidated he should receive compensation at ninety per cent of that paid to his principal. If he is only per-

forming the duties of one of the offices which are now consolidated he should be paid on the basis of the salary provided for the office in which he is actually serving.

Your opinion request does not contain sufficient information for me to determine in what capacity the aforementioned deputies are serving. Such factual determination can easily be made by your Board of County Commissioners as such board is in a position to be familiar with the operation of the office under consideration.

Therefore it is my opinion that a deputy serving in a consolidated county office may, in the discretion of the Board of County Commissioners, be compensated for his services at ninety per cent of the salary of the holder of such office if the deputy is in fact performing duties with respect to both of the offices which have been consolidated. If such deputy is employed in such a capacity that he is performing the duties of only one of the individual offices which have been consolidated his compensation may not be based upon that of the holder of the consolidated office.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.