

**Opinion No. 32**

**Deputy Sheriffs—Counties—Boards of  
County Commissioners—Salaries  
of Deputy Sheriffs.**

**Held:** A board of county commissioners may not pay a full time deputy sheriff less than ninety per cent of the salary of the officer under whom they are serving. Part time deputy sheriffs must be paid a proportionate salary based on the salary authorized for a full time deputy.

August 13, 1951.

Mr. John M. Comfort  
County Attorney  
Madison County  
Virginia City, Montana

Dear Mr. Comfort:

You have requested my opinion on the following question:

1. May the board of county commissioners divide the salary of one deputy sheriff into four parts so that each of four deputy sheriffs would receive one-fourth of the full salary of a deputy sheriff as provided by Section 25-604, R. C. M. 1947, as amended by Chapter 136, Session Laws of 1951?

You advise me that in the past the sheriff of Madison County has employed four deputy sheriffs, one of whom is located in each of four towns in the County, and that part of their salaries has been paid for by the County and part by the town in which the deputy is located. Before the 1951 amendment it was permissible for the boards of

county commissioners to set the salary of deputy sheriffs at any amount not exceeding ninety per cent of the sheriffs salary. You state that such an arrangement proved to be a satisfactory method of policing the large area of Madison County.

Madison County although large in area is comparatively small in population and being a county of the sixth class is only entitled under the provisions of Section 16-3701, Revised Codes of Montana, 1947, to one under-sheriff and one deputy sheriff. However, Section 25-604, supra, as amended by Chapter 133, Session Laws of 1951, provides that the board of county commissioners may allow the various county officers to appoint a greater number of deputies than the maximum number allowed by law, when in the judgment of the board such greater number is needed for the faithful and prompt discharge of the duties of the county office. Thus, the board may, if it deems it necessary, employ as many as four deputies in Madison County. The question then arises what salary is to be paid these additional deputies?

Section 25-604, supra, was amended by Chapter 136, Session Laws of 1951. The amendatory Act was introduced as a Senate Bill and after making minor changes in the body of the existing statute the following sentences were added to the end of the section:

"In fixing the compensation allowed the under-sheriff the board must fix the same at not less than ninety-five per cent (95%) of the salary of the officer under whom such undersheriff is serving.

"In fixing the compensation allowed the deputy sheriffs the board must fix the same at not less than ninety per cent (90%) of the salary of the officer under whom such deputy sheriff is serving." (Emphasis supplied)

The bill passed the Senate in the same form as it was originally introduced. However, when the bill was sent to the House the House Committee on Townships and Counties recommended that the bill be amended by deleting the underlined words of these above quoted sentences, and by inserting the permissive word "may" for the mandatory word "must." The report of this Committee was only partially accepted

by the House sitting as a Committee of the Whole in that the deletion was concurred in, but the mandatory word "must" was reinserted for the word "may". The House also changed the effective date of the Act to July 1, 1951. In this form the Bill passed the House and the amendments were concurred in by the Senate, and the bill became law upon the approval of the Governor, although not effective until July 1, 1951.

Thus, by tracing the legislative history of Chapter 136, supra, it is clear that the legislative intent was to make it mandatory that boards of county commissioners pay the deputy sheriffs ninety per cent of the salary of the sheriff under whom they are serving. Consequently, if four full time additional deputy sheriffs are employed in Madison County each must receive ninety per cent of the sheriff's salary, and the answer to your question is "no".

If the board of county commissioners deem it to the best interests of Madison County to continue to employ four deputy sheriffs then the maximum salary must be paid if the deputies are on full time duty. However, the board may, if it chooses, authorize the appointment of additional deputies on a part time basis. If this is done the appointee will be entitled to a proportionate salary based on the ninety per cent figure.

Therefore, it is my opinion that a board of county commissioners may not pay full time deputy sheriffs less than ninety per cent of the salary of the officer under whom they are serving.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General