

March 15, 1952.

Mr. John Michael McCarvel  
County Attorney  
Deer Lodge County  
Anaconda, Montana

Dear Mr. McCarvel:

You have requested my official opinion on the following questions:

1. Can the county commissioners authorize the payment of a greater amount of money to the sheriff's deputies than is provided for by section 25-604, Revised Codes of Montana, 1947, as amended by Chapter 136, Session Laws of 1951?
2. Do the sheriff's deputies come under the provisions of section 41-1121, R. C. M., 1947?

In answer to your first question I refer you to Volume 24, Opinions of the Attorney General, Opinion number 32. In that opinion I held:

"Thus by tracing the legislative history of Chapter 136 Session Laws of 1951, 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 salary of the sheriff under whom they are serving."

I re-affirm this holding, and in answer to your first question, it is my opinion that the board of county commissioners cannot pay the deputy sheriffs a sum in excess of ninety per cent of the salary of the sheriff under whom they are serving.

In answer to your second question, I wish to quote the applicable portion of section 41-1121, R. C. M., 1947:

"A period of eight hours shall constitute a days work in all works and undertakings carried on or aided by any municipal county, or state government, first class school districts, and on all contracts let by them, and for all janitors except in court houses of the sixth and seventh class counties, engineers, firemen, caretakers, custodians and laborers employed in or about any buildings, works or grounds used or occupied for any purpose, by any municipal, county, or state governments, . . .".

In Volume 20, Opinions of the At-

**Opinion No. 72**

**Deputy Sheriffs—Counties—Boards of County Commissioners—Salaries of Deputy Sheriffs—Hours of Duty of Deputy Sheriffs—Sections 16-3704, 25-604, 41-1121 of R. C. M. 1947—Chapter 136 Session Laws of 1951.**

**HELD:** The Board of County Commissioners cannot pay the deputy sheriff a sum in excess of ninety per-cent of the salary of the sheriff under whom they are serving.

Deputy sheriffs should not have to work over eight hours a day on routine duties; rather, only when necessity demands excessive hours in protecting life or property from loss or destruction should they remain on duty for longer periods.

torney General, Opinions No. 105, at page 129, it was held that the first portion of this section refers to works of improvements, such as erection of buildings and bridges, construction of roads and highways and other similar works and undertakings of the county.

It is to be further noted that the latter portion of the statute enumerates the classes covered by the section, and that it is not an all inclusive section covering all employees. Therefore, it would appear that this section, found in the general chapter on labor, refers only to those enumerated classes. As was held in the case of Siuru vs. Sell, 108 Mont. 438, 91 P. 2d 411, 123 A. L. R. 423:

“Our office is simply to ascertain and declare what is in terms or substance contained therein, not to insert what has been omitted, or to omit what has been inserted”.

It is therefore my opinion that deputy sheriffs are not within the provisions of section 41-1121 (supra), regulating county works and undertakings to an eight hour day. However, it is also my opinion that those deputies should not have to work over eight hours a day on routine duties; rather, only when necessity demands excessive hours in protecting life or property from loss or destruction should they remain on duty for longer periods. Should the sheriff find that he cannot administer routine matters without working his deputies over eight hours, the situation should be alleviated by adopting the remedy provided by section 16-3704, R. C. M., 1947, which allows the county commissioners to appoint a greater number of deputies when, in their judgment, a greater number is needed for the faithful and prompt discharge of the duties of any county office.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General