

Opinion No. 9**Constitutional Law—Salaries of
Undersheriffs and Deputy Sheriffs
—Public Officers**

Held: Chapter 136, Session Laws of 1951, which makes it mandatory for boards of county commissioners to fix the salaries of undersheriffs and deputy sheriffs at a fixed percentage of the salary of the officer under whom they serve does not violate Article V, Section 26 nor Article V, Section 31 of the Montana Constitution.

March 28, 1951.

Mrs. Otto Powell, Chairman
Board of County Commissioners
Cascade County
Great Falls, Montana

Dear Mr. Powell:

You have requested my opinion on the effect of Senate Bill 77, which will be Chapter 136 of the Session Laws of 1951. This Act provides for an increase in the salaries of undersheriffs and deputy sheriffs. You inquire as to what effect it will have on your budget and also whether it violates the constitutional provisions prohibiting class legislation and special laws.

The Act in question was an amendment to Section 25-604, Revised Codes of Montana, 1947. Section 25-604, *supra*, relates to the power of boards of county commissioners to fix the number and salaries of deputies and assistants in the various county offices. There was added to the end of the present code section the following two sentences:

“In fixing the compensation allow-

ed the under-sheiff the board must fix the same at ninety-five per cent (95%) of the salary of the officers under whom such under-sheriff is serving;"

"In fixing the compensation allowed the deputy-sheriffs the board must fix the same at ninety per cent (90%) of the salary of the officer under whom such deputy sheriff is serving."

The Bill as it was originally introduced provided that the Board must fix the salaries of the under-sheriffs and deputy sheriffs as "not less than" ninety-five and ninety per cent of the salary of the sheriff respectively. The House Committee on Townships and Counties recommended that the Senate Bill be amended to change the word "must" to "may", thereby giving the boards of county commissioners discretion in fixing the salaries, and that committee further recommended that the words "not less than" be deleted so as to put a ceiling on the amount of the salary to be fixed by the board. The House acting as a Committee of the Whole, however, rejected in part the amendment proposed by the Committee on Township and Counties and reinserted the mandatory word "must" rather than the discretionary word "may". However, the Committee of the Whole did not reinsert the words "not less than" and so the bill as it passed the House makes it mandatory that the Boards of County Commissioners fix the salaries at ninety-five and ninety per cent respectively, but these percentages are the maximum that may be allowed by the boards of county commissioners.

The bill as it originally passed the Senate provided that it would take effect upon its passage and approval by the governor. However, the House Committee of the Whole deleted that provision, and consequently the bill will not become effective until July 1, 1951. Consequently, the under-sheriffs, and deputies may not be allowed the increase in salary until July 1, 1951, and hence there is no present problem concerning the current budget of the counties. Of course, provision must be made to pay this increase when the next budget is prepared.

In my opinion the new law does not violate either Art. V, Section 31 nor Article V, Section 26 of the Montana

Constitution. Article V, Section 26 prohibits the legislative assembly from passing local or special laws regulating county or township affairs, but since Chapter 136, supra., relates to all deputy sheriffs and undersheriffs in all counties it is general in its operation and not special and hence not within the constitutional ban. See *Adami v. County of Lewis and Clark*, 114 Mont. 557, 560.

Further, deputy sheriffs and undersheriffs are not public officers within the meaning of the term as it is used in Section 31, Art. V of the Montana Constitution. This latter section of the Constitution prohibits the legislative assembly from increasing or decreasing the salary or emoluments of a public officer after his election or appointment. However, the Montana Supreme Court in the *Adami* case, cited above, held that since under-sheriffs and deputies hold their positions at the will of the sheriff that they are not public officers. *State ex rel Boyle v. Hall*, 53 Mont. 595. *State ex rel. Rusch v. Board of County Commissioners of Yellowstone County*, 121 Mont. 162.

Therefore, it is my opinion that Chapter 136, Session Laws of 1951 which makes it mandatory for boards of county commissioners to fix the salaries of undersheriffs and deputy Sheriffs at a fixed percentage of the the salary of the officer under whom they serve does not violate Article V, Section 26 nor Article V, Section 31 of the Montana Constitution.

Very truly yours,
ARNOLD H. OLSEN
Attorney General