

VOLUME NO. 35

Opinion No. 21

OFFICES AND OFFICERS — County, deputy sheriffs salaries; SHERIFFS — DEPUTIES, SALARY. SECTION 25-604, R.C.M. 1947.

HELD: The salary of a deputy sheriff of a first, second or third-class county may be set by the county commissioners between a minimum of 75% of the sheriff's salary and a maximum of 90% of the sheriff's salary, provided that a deputy sheriff may not be paid less than he was making on July 1, 1971.

August 10, 1973

Mr. J. Fred Bourdeau
 Cascade County Attorney
 County Attorney's Office
 Great Falls, Montana 59401

Attention: Mr. Michael T. Greely
 Deputy County Attorney

Dear Mr. Bourdeau:

I am in receipt of your recent letter wherein you asked my opinion on the following question:

What are the minimum and maximum salaries that the county commissioners of a first, second, or third class county can set for deputy sheriffs?

The answer to this question is based on section 25-604, Revised Codes of Montana, 1947, which provides in part:

[In] fixing the compensation allowed the deputy sheriffs the board must fix the same at nine per cent (90%) of the salary of the officer under whom such deputy sheriff is serving, except in counties of the first, second, or third class in which the board must fix the same at not

less than seventy-five per cent (75%) nor more than ninety per cent (90%) of the salary of the officer under whom such deputy sheriff is serving; provided, however, that no deputy sheriff presently employed may be paid less than the compensation he is receiving on the effective date of this act.

The preceding section requires county commissioners to fix salaries for deputy sheriffs of first, second and third-class counties at any figure between a minimum of seventy-five per cent (75%) of the sheriff's salary and a maximum of ninety per cent (90%). The only restriction placed on the county commissioners is that they cannot pay a deputy sheriff less than he was making on the effective date of the act: July 1, 1971.

The working of this section could best be explained by a hypothetical situation. Let us assume that the sheriff of a first-class county is being paid \$500 per month. His deputy sheriff is earning 90% of this figure, or \$450 per month. The sheriff receives a salary increase and begins earning \$800 per month. The county commissioners must, by virtue of section 25-604, supra, increase the salary of the deputy sheriff accordingly; i.e., they may pay him any amount between 75% and 90% of the sheriff's salary. Hence, the deputy sheriff could be earning between \$600, which is 75% of the sheriff's salary, and \$720, which is 90% of the sheriff's salary. There is no requirement that the county commissioners continue to pay the deputy sheriff 90% of the sheriff's salary simply because he was being paid on this scale prior to the sheriff's salary increase.

THEREFORE, IT IS MY OPINION:

Section 25-604, supra, allows the county commissioners in a first, second, or third-class county to fix salaries for deputy sheriffs at any figure between a minimum of seventy-five per cent (75%) of the sheriff's salary and a maximum of ninety per cent (90%) of the sheriff's salary, provided that they cannot pay a deputy sheriff less than he was making prior to July 1, 1971.

Very truly yours,

ROBERT L. WOODAHL
Attorney General