

VOLUME NO. 35

Opinion No. 24

**COUNTY ATTORNEYS — Salary; OFFICES AND OFFICERS —
County attorneys, salary. Sections 25-601 and 25-605, R.C.M. 1947;
Chapter 306, Session Laws of 1973.**

HELD: The county commissioners must set the salary of the county attorney by resolution, and must forward a copy of the resolution to the state auditor for proper payment of the county attorneys.

August 27, 1973

Honorable E.V. "Sonny" Omholt
State Auditor and Ex Officio
Commissioner of Insurance
State Capitol
Helena, Montana 59601

Dear Mr. Omholt:

You have requested my opinion as to the method of setting salaries for county attorneys pursuant to recent statutory changes adopted by the 1973 legislative session. In particular, you ask whether the county commissioners should by resolution set the salary of the county attorney and certify the same to the state auditor, or whether the state auditor should reschedule the county attorneys' salaries each year.

Section 25-601, Revised Codes of Montana, 1947, provides:

The salaries of the several county officers and their assistants must be paid monthly out of the general fund of the county, upon the order of the board of county commissioners, except the salary of the county attorney, which is payable monthly, one-half from the general fund of the county and the other one-half from the state treasury upon the warrant of the state auditor. The county commissioners of each county shall, within thirty (30) days after the election or appointment to fill a vacancy for any cause, of any county attorney, certify such election or appointment to the state auditor who shall thereafter draw warrants for such salaries in the same manner as for state officers. Provided, in case of a vacancy, the county commissioners shall immediately notify the state auditor, and the auditor shall compute the salaries due on the basis of said notification.

Pursuant to this code provision, the county commissioners must certify the election or appointment of a county attorney to the state auditor, who thereafter shall draw warrants for the county attorneys' salaries.

It must be noted that Article V, section 31, Constitution of Montana, 1889, prohibited a public officer's salary from being increased or decreased during his term, and provided in part:

Except as otherwise provided in this constitution, no law shall extend the term of any public officer, or increase or diminish his salary or emolument after his election or appointment; ...

The Constitution of Montana, 1972, does not contain such a prohibition.

Likewise, section 25-609, R.C.M. 1947, previously prohibited any increase in salary of an elected county official during the term for which he had been elected. However, section 25-609, supra, was repealed and the 1973 legislature enacted Chapter 306, Session Laws of 1973, which provides:

The county commissioners shall, by resolution on or before July 1 of each year, fix the salaries of the county treasurer, county clerk, county assessor, county superintendent, county sheriff, county attorney, clerk of the district court for the following fiscal year in conformity with the appropriate statutory salary schedule pertaining to each office. The salary schedule used for each office shall be the statutory schedule in effect on the first day of the following fiscal year.

As the previous constitutional and statutory prohibitions against increase in salaries during a term of an elected county official have been removed, the legislature adopted the above-quoted provision requiring the county commissioners to fix the salaries on or before July first of each year.

The county commissioners have the duty to set the salaries of elected county officials pursuant to section 25-605, supra. This section provides for a salary based upon a combination of population and taxable valuation of the county. As the county commissioners are privy to the information required to set the county officials' salaries, this should be done in the county and not through the state auditor's office, since a record will be maintained in each county concerning population and taxable valuation. Section 25-601, supra, indicates that the legislature placed the duty upon the county commissioners to forward relevant salary information to the state auditor for payment of one-half of the county attorney's salary. Pursuant to the above-quoted provisions, the county commissioners must, before July first of each year, by resolution adopt a salary schedule of the county attorney pursuant to section 25-605, supra. It would then be incumbent upon the county commissioners to forward a copy of such resolution to the state auditor so that the auditor may make proper payment to the respective county attorneys in the state.

THEREFORE, IT IS MY OPINION:

The county commissioners must set the salary of the county attorney by resolution on or before July first of each year, and that the county commissioners must forward a copy of such resolution to the state auditor so that the auditor may make proper payment to the respective county attorneys.

Very truly yours,

ROBERT L. WOODAHL
Attorney General