

**VOLUME NO. 35****Opinion No. 33****COUNTIES — Salaries of county officers; OFFICES AND OFFICERS — Salary schedules for county offices. Section 25-609.1, R.C.M. 1947.**

- HELD:** 1. Salaries of county officers are set each year for the following fiscal year in conformity with the statutory schedule in effect on July 1 of the fiscal year.
2. County officers' salaries are not retroactively adjusted following the property valuation in August of each fiscal year.

October 16, 1973

Mr. William F. Meisburger  
Rosebud County Attorney  
County Attorney's Office  
Forsyth, Montana 59327

Dear Mr. Meisburger:

You have requested my opinion concerning salary schedules for county officers in 1974. Specifically, you have asked whether salary adjustments based upon county population and taxable valuation are for the entire year of 1974 and necessarily retroactive, or whether the salary adjustments would be effective only at the time and from the date of adoption of the valuation for 1974.

The salaries of certain county officers are determined by the population of the county and the taxable valuation of the county under section 25-605, Revised Codes of Montana, 1947, as amended by Chapter 474, Session Laws of 1973. This act was signed by the governor and became effective on the first day of July, 1973.

Chapter 306, Session Laws of 1973, provides at section 25-609.1, Revised Codes of Montana, 1947:

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 school 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.** (Emphasis supplied)

As the fiscal year runs from July 1 through June 30 of calendar years, the salary schedules would not apply retroactively to the beginning of the calendar year and would be effective only after July 1 in the year of the adoption of the valuation for the following fiscal year.

It should be noted, however, that although the county commissioners are required to fix the salaries of county officers by July 1 of each year, the valuation of property for taxes, under section 84-3805, is not required until the second Monday in August. As salaries of certain county offices are partially determined by taxable valuation of the county, the salary schedules for that fiscal year will be based upon the statutory schedule in effect on July 1, and not upon an adjusted schedule after the property valuation in August. Thus, there should be no retroactive revision of salaries for county offices.

Chapter 306, Session Laws of 1973, also repealed section 25-609, R.C.M. 1947, relating to the setting of salary schedules of certain county officers by the county commissioners. Both the 1889 constitution, at Article V, section 31, and section 25-609, R.C.M. 1947, prior to being repealed, prohibited a change in salary of county officers for the entire term of office. However, the new constitution does not prohibit changes in salary during a term of office, and House Bill 143 specifically provides that the county commissioners on or before July 1 **of each year** fix the salaries of the county officers **for the following fiscal year**. Thus, salaries of county officers may change during a term of office.

THEREFORE, IT IS MY OPINION:

1. The county commissioners are to set the salaries of certain county officers for each fiscal year in conformity with the appropriate statutory schedule in effect on July 1; and
2. The salary schedules so set apply to the following fiscal year with no retroactive adjustment.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General