

VOLUME NO. 36

Opinion No. 48

COUNTY COMMISSIONERS — Duties. Reduction for one commissioner prohibited; Salaries, Reduction for one commissioner prohibited; Sections 16-912, Revised Codes of Montana 1947.

HELD: A county commissioner of a first, second, third, or fourth class county may not reduce his work load relative to the work loads of the other commissioners and have his pay reduced accordingly.

January 7, 1976

Mr. Joseph C. Connors
Deer Lodge County Attorney
400 East Park Street
Anaconda, Montana 59711

Dear Mr. Connors:

You have requested my opinion on the following question:

May a county commissioner of a third or fourth class county reduce his work load relative to the work loads of the other commissioners and have his pay reduced accordingly?

Prior to the 1973 amendment, section 16-912(1) provided in pertinent part:

Each member of the board of county commissioners of counties of the first, second, third, and fourth class, shall receive an annual salary as hereinafter set forth:

| | |
|--------------|---------|
| First class | \$6,500 |
| Second class | \$6,300 |
| Third class | \$6,100 |
| Fourth class | \$6,000 |

Under this version of section 16-912(1), a member of the board of county commissioners could not reduce his work load and receive a decreased salary.

However, in 1973 the Legislature amended section 16-912(1) to read as follows:

Each member of the board of county commissioners of counties of the first, second, third, and fourth class, shall receive an annual salary to be established by resolution of the board of county commissioners in an amount not to exceed the annual salary established in the schedule in section 25-605, R.C.M. 1947, for the clerk and recorder.

This present statute does not clearly provide an answer to your question. It is a rule of statutory construction that whenever the meaning of a statute is not clear on its face, the intent of the Legislature is to be followed wherever possible. **City of Billings v. Smith**, 158 Mont. 197, 490 P.2d 221 (1971). Your question, therefore, comes down to one of whether the Legislature in amending section 16-912(1) in 1973, intended to allow different salaries to be set for one or more members of the board of county commissioners in first, second, third or fourth class counties. I have concluded that there is no evidence of such an intent and that the board of county commissioners of first, second, third, and fourth class counties may not reduce the work load of one county commissioner and reduce his pay accordingly. My conclusion is based upon the laws establishing the powers and duties of the board of county commissioners and the law governing election of members of the various county commissioner boards.

It is to be presumed that the Legislature passed a law with full knowledge of all existing law on the same subject. **Fletcher v. Page**, 124 Mont. 114, 200 P.2d 484 (1950). Some of the laws existing at the time of enactment of the 1973 amendment to section 16-912(1) were Chapters 10 and 11 of Title 16. These chapters set out the general and special powers or duties of the boards of county commissioners. Nowhere within these chapters is there a provision that a commissioner may reduce his workload or that one or two commissioners may perform acts or functions assigned to the board by statute. The assumption is that the board as a body exercises its powers and performs its duties and that each member of the board has equal powers and responsibilities.

Section 16-902.3 provides that each member of the board of county commissioners shall be a resident of a district of the county. The purpose of this statute is to provide that no two commissioners come from the same area of the county—i.e.—that the various districts of the county are equally represented on the board.

The fact that the Legislature provided for county commissioner districts in 1974 indicates an assumption on the part of the Legislature that each member of the board of county commissioners would share equally the duties and powers of the board. I have therefore concluded that the purpose of the 1973 amendment to section 16-912(1) was not to allow each board of county commissioners to set different salaries for one or more members of the board, but rather to allow the board to set one annual salary for all three commissioners based on the amount of time required to perform the duties and functions of the office in that particular county.

THEREFORE, IT IS MY OPINION:

A county commissioner of a first, second, third, or fourth class county may not reduce his work load relative to the work loads of the other commissioners and have his pay reduced accordingly.

Very truly yours,

ROBERT L. WOODAHL
Attorney General