

VOLUME NO. 36

Opinion No. 68

COUNTY ASSESSORS — Deputies, salaries; COUNTY ASSESSORS — Employees, salaries; Sections 25-601, 25-603, 25-604, 25-605 and 84-404.

- HELD:**
- 1. The burden of maintaining the office of county assessor rests with the department of revenue.**
 - 2. Section 84-401(4) mandates that the salaries of the deputy county assessors be the same dollar amount as those of the deputy clerk and recorders.**
 - 3. The department of revenue has the sole authority to set the salary level of the remainder of the county assessor's staff.**

April 8, 1976

Mr. Harold Hanser
Yellowstone County Attorney
Courthouse
Billings, MT 59101

Dear Mr. Hanser:

You have requested my opinion concerning the following question:

Are the members of the staffs of the various County Assessors employees of the state or the county for purposes of determining their salaries?

The Constitution of Montana, Article VIII, Section 3 (1972) provides:

The **state** shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law. (Emphasis supplied)

As the Convention Notes point out, this section revises the 1889 Constitution (Article XII, Section 15) in that it removes reference to boards of equalization, leaving the legislature free to determine the method of securing property tax equalization. This provision makes clear that the state alone is responsible for the appraising and assessing of all property.

Pursuant to our new Constitution, the legislature has amended applicable statutes, vesting the department of revenue with the responsibility of adjusting and equalizing the valuations of taxable property within the state. In carrying out this responsibility the department of revenue has assumed the burden of paying the salaries of the officers and employees within the county assessor's office. Previously these salaries were paid by the county. Except for the assessors, the department has been paying the employees in the assessors office according to the salary schedule provided for in the state pay classification plan. Similarly, these employees are receiving the same "fringe benefits" as are given state employees. The issue here is whether this is proper or whether the power to set conditions of employment for employees in the assessors office is still vested in the county officials.

Prior to the passage of the new Constitution and legislation passed pursuant thereto the payment of county officers, deputies, and employees was controlled by Title 25, Chapter 6. A question now arises as to what extent these laws are still applicable to the county assessor's office. Prior to 1973, section 25-605 provided the statutory formula for determining the salary of all officers, including the county assessors. However in 1973 this provision was amended, deleting mention of the county assessor. Thus the legislature has now separated the assessor from other county officers for purposes of the salary to be paid.

The salaries of the assessors and deputy assessors are now provided for in section 84-404(4).

The salaries of the county assessor shall be the same amount as provided by law for the county clerk and recorder; deputy assessors' salaries shall be the same as paid the deputy clerk and recorder.

The amount to be paid the assessor presents no problem since that salary is determined according to section 25-605. No discretion has ever existed in any entity as to the amount to be paid. However in the case of the deputy assessors such discretion has existed in the past. Now the legislature has mandated that the "deputy assessors" salaries shall be the same as paid the deputy clerk and recorder. It is my opinion that under the rules of statutory construction this statute must be deemed to provide that deputy assessors now must receive the same dollar amount in salary as do the deputy clerk and recorders.

Where the intention of the legislature can be determined from the plain meaning of the words used, the courts may not go further and apply any other means of interpretation. *Dunphy v. Anaconda Co.*, 151 Mont. 76, 438 P.2d 660.

The plain meaning of the language in this provision clearly imports the intent that henceforth the deputy assessor's salary is to be equal to that paid the deputy clerk and recorder of that county. I am well aware of the problems and inequities which this may cause but recognize that any remedy must come from legislative action. The present applicability of section 25-604 to the office of county assessor will be discussed below and that discussion applies to the deputy county assessor as well as the remainder of the staff.

The primary issue here is who is responsible for setting the salaries for the remainder of the assessor's staff. Is this responsibility vested in the county officials or in the department of revenue?

Prior to 1973, section 25-604 vested this responsibility in the boards of county commissioners.

That the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant mentioned in the preceding section except as herein provided;...

The "preceding section" referred to is section 25-603 and that statute still contains reference to the county assessor and their deputies and assistants. These provisions, to the extent of their application to the office of county assessor are inconsistent with later statutes passed in 1973 by the legislature in carrying out the directive of Article VIII, Section 3 of the new state constitution. The rules of statutory construction provide that where a more recent statute conflicts with an earlier one, the conflicting provision of the earlier statutes are repealed. *State v. Langan*, 151 Mont. 558, 445 P.2d 565 (1968).

Section 84-402(1), passed in 1973, provides that the value of property is to be determined by the department of revenue or its agents. Section 84-402(2) provides that county assessors are agents of the department of revenue. Section 84-402(3) provides that the department of revenue shall have "full charge of appraising **all property** subject to taxation and equalizing values **and shall secure such personnel as is necessary to properly perform their duties.**" (Emphasis supplied). The staffs of the county assessors as part of their duties, determine the value of personal property according to schedules issued by the department of revenue. To this extent they fall within that class of persons which the department is required to secure. Section 84-404(5) provides that the county must make available to the county assessor office space if possible. Concurrently, this provision would seem to limit the county's responsibility to this one area. Together, these provisions clearly show that the legislature has seen fit to place the burden of maintaining the county assessor's office on the department of revenue. Therefore section 25-601, to the extent of its application to the assessor's office is deemed impliedly repealed. Further, having reached this conclusion, it is impossible to conclude that the power to set the salaries of these

persons is still vested in the county. That would put the department in the unworkable position of having to pay salary levels set by a local governmental unit secure in the knowledge that they would not have to pay these salaries. It is inconceivable that this was the legislature's intent. Therefore, section 25-604 is impliedly repealed to the extent of its application to the county assessor's office.

THEREFORE, IT IS MY OPINION:

1. The burden of maintaining the office of county assessor rests with the department of revenue.
2. Section 84-401 (4) mandates that the salaries of the deputy county assessors be the same dollar amount as those of the deputy clerk and recorders.
3. The department of revenue has the sole authority to set the salary level of the remainder of the county assessor's staff.

Very truly yours,

ROBERT L. WOODAHL
Attorney General