

VOLUME NO. 37

OPINION NO. 13

OFFICERS AND OFFICERS - Deputy Sheriffs 90% limitation on deputies' salaries; REVISED CODES OF MONTANA, 1947 - Sections 25-604, 69-3602.

HELD: Deputy County Sheriffs who receive the full ninety percent salary allowed by section 25-604, R.C.M. 1947, may receive a stipend for operating the county ambulance in addition to their regular salary.

5 April 1977

Joseph C. Connors, Esq.
Deer Lodge County Attorney
Deer Lodge County Courthouse
Anaconda, Montana 59711

Dear Mr. Connors:

You have requested my opinion regarding the compensation received by deputy sheriffs. Specifically the question is:

May a deputy sheriff, who is presently receiving the maximum salary provided in section 25-604, R.C.M. 1947, receive an additional stipend of fifty dollars per month for driving a county ambulance while on duty.

Section 25-604, R.C.M. 1947, provides in pertinent part:

...in fixing the compensation allowed the deputy sheriffs, the board must fix the same at ninety percent (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 percent (75%) nor more than ninety percent (90%) of the salary of the officer under whom such deputy sheriff is serving.

The Montana Supreme Court in City of Billings v. Smith, 158 Mont. 197, 490 P.2d 221 (1971), held that the Minimum Wage Act of 1971 did not apply to the salaries of county deputies by virtue of the 90% salary limitation of section 25-604, supra. By virtue of that decision, county deputies are not entitled to overtime payments provided other employees under the Minimum Wage Act.

Subsequent to that decision, on March 31, 1976, Attorney General Woodahl issued 36 OP. ATT'Y GEN. NO. 63. That opinion considered the appropriate statutes together with City of Billings v. Smith, supra, and concluded that deputy county officers who received the full ninety percent (90%) salary allowed by section 25-604, supra, may receive local registrar's fees in addition to their salary. In reaching that conclusion Attorney General Woodahl stated:

Section 25-604, supra, does provide for a 90% limitation on the salary of county deputies. "Salary", when used in connection with county officers or employees has been held to mean, "...what it ordinarily means: a fixed compensation, made by law to be paid periodically for services,..." Scharrenbroich v. Lewis and Clark County, 33 Mont. 250, 83 P. 482 (1905). The services referred to in this case would be those required of a deputy county clerk and recorder. The question now becomes whether the sending of vital statistics to the Department of Health is within the normal duties of a deputy clerk and recorder.

There is not statutory authority that provides for any county officer to send vital statistics reports to the Department of Health. Title 69, chapter 44, R.C.M. 1947, makes it the duty of the local registrar to send the vital statistics reports to the Department of Health. In addition chapter 44 requires that the local registrar's work with the county clerk and recorder's office in filing the required certificates. Section 69-4411, R.C.M. 1947. One can conclude therefore that the salary paid a chief county deputy does not include compensation for performing the duties of a local registrar.

Since the local registrar fee received by a chief county deputy officer is not for services required to be performed as a deputy county officer, it cannot be considered as additional salary for the position. The 90% limitation prohibits any additional compensation for services rendered as a deputy, and does not prohibit compensation for other services.

It is possible to draw an analogy between the factual situation in the prior opinion and the factual circumstances at hand. Regarding the operation of a county or municipal ambulance service, section 69-3602, R.C.M. 1947, provides as follows:

69-3602. Methods of Operation--Rules--Fees. If a county, city, or town establishes or maintains such ambulance service it may, acting through its governing board:

- (1) Operate the service itself or contract for such service;
- (2) Buy, rent, or otherwise contract for vehicles, equipment, facilities, operators, or attendants;
- (3) Adopt rules and establish fees or charges for the furnishing of such ambulance service.

The statute clearly authorizes counties to contract for operators or attendants for ambulance service. There is no statute that imposes a duty upon the sheriff or deputy sheriff to operate the county ambulance service. The operation of such service is not part of the deputy's normal duties for which he is paid his regular salary. One can conclude that the salary paid a deputy does not include compensation for driving the ambulance. Consequently, following the logic of 36 OP. ATT'Y GEN. NO. 63, section 25-604, supra, does not apply in this case.

THEREFORE, IT IS MY OPINION:

Deputy county sheriffs who receive the full ninety percent (90%) salary allowed by section 25-604, R.C.M. 1947, may receive a stipend for operating the county ambulance in addition to their regular salary.

Very truly yours,

MIKE GREELY
Attorney General