

VOLUME NO. 37

OPINION NO. 70

COUNTIES - A county having self-government powers may grant an increase in salary to its county attorney, in excess of the amount provided in section 25-605, R.C.M. 1947; COUNTY ATTORNEY - A county having self-government powers may grant an increase in salary to its county attorney, in excess of the amount provided in section 25-605, R.C.M. 1947; COUNTY OFFICERS AND EMPLOYEES - A county having self-government powers may grant an increase in salary to its county attorney, in excess of the amount provided in section 25-605, R.C.M. 1947; SALARIES - A county having self-government powers may grant an increase in salary to its

county attorney, in excess of the amount provided in section 25-605, R.C.M. 1947; REVISED CODES OF MONTANA, 1947 - Section 25-605.

HELD: The Madison County Board of County Commissioners may grant an increase to their county attorney in excess of the amount provided in section 25-605, R.C.M. 1947, as a valid exercise of their self-government powers pursuant to the newly adopted charter form of government. However, the cost of such an increase must be borne by the general fund of the county. The state's share of the county attorney's salary will continue to be computed in accordance with section 25-605, R.C.M. 1947.

23 September 1977

Chester L. Jones, Esq.
Madison County Attorney
Madison County Courthouse
Virginia City, Montana 59755

Dear Mr. Jones:

You have requested my opinion on the following question:

Whether the Madison County Board of County Commissioners, pursuant to a newly adopted charter form of government, may grant an increase in the county attorney's salary, in excess of the amount provided in section 25-605, R.C.M. 1947?

Madison County has recently adopted a charter form of government with self-government powers, pursuant to Article XI, section 5, 1972 Montana Constitution and section 47A-3-108, R.C.M. 1947. The scope of powers available to local governments adopting self-government powers is contrary to the previously well-settled doctrine that local governments had only those powers specifically granted to them by state law. Compare Leishner v. City of Billings, 135 Mont. 109, 337 P.2d 359 (1959). The scope of self-government powers, on the other hand, is that local government units may exercise any powers not specifically denied by the Constitution, law, or charter. For a thorough discussion of self-government powers see 37 OP. ATT'Y GEN. NO. 68.

In determining whether a self-government power is authorized, it is necessary to: 1) consult the charter and the Montana Constitution for any prohibitions; 2) determine

whether the exercise is prohibited under the various provisions of Title 47A, R.C.M. 1947, or other statutes specifically applicable to self-government units; and 3) decide whether it is inconsistent with state provisions in an area affirmatively subjected to state control, as defined by section 47A-7-203, R.C.M. 1947.

Article IV, section 4(1)(i) of the Charter of Madison County expressly gives the commission the power to set salaries of all elected officials. There is no constitutional or specific statutory prohibitions regarding the exercise of that authority. Section 25-605, R.C.M. 1947, may be superceded by ordinance or resolution of the commission pursuant to section 47A-7-105, R.C.M. 1947. See 37 OP. ATT'Y GEN. NO. 68.

However, the salary of the county attorney presents a unique situation since one-half of the salary is payable from the general fund of the county with the remaining one-half payable from the state treasury upon the warrant of the state auditor. Section 25-601, R.C.M. 1947. Thus, the salary of the county attorney is not purely a local government matter. The duties and functions of the state auditor are within an area that is affirmatively subjected to state control, and a local government unit cannot impose a duty inconsistent with that imposed upon the auditor by state law. It is inherent that when section 25-601, R.C.M. 1947, directs the state auditor to pay one-half of county attorney's salary that one-half will be computed on the basis of the schedule provided in section 25-605, R.C.M. 1947.

Consequently, any increase granted to the county attorney by Madison County in excess of the schedule in section 25-605, R.C.M. 1947, must be borne by the general fund of the county. The state's share of the county attorney's salary will continue to be computed in accordance with section 25-605, R.C.M. 1947. Therefore, Madison County will be required to continue providing the information necessary under section 25-605, R.C.M. 1947 to compute the state's share.

THEREFORE, IT IS MY OPINION:

The Madison County Board of County Commissioners may grant an increase to their county attorney in excess of the amount provided in section 25-605, R.C.M. 1947, as a valid exercise of their self-government powers

pursuant to the newly adopted charter form of government. However, the cost of such an increase must be borne by the general fund of the county. The state's share of the county attorney's salary will continue to be computed in accordance with section 25-605, R.C.M. 1947.

Very truly yours,

MIKE GREELY
Attorney General