

VOLUME NO. 38

OPINION NO. 43

COUNTY COMMISSIONERS - Administrative Assistants, authority to set salaries;
COUNTY OFFICERS AND EMPLOYEES - Administrative Assistants to county commissioners, salaries;
SALARIES - Administrative Assistants to county commissioners;
MONTANA CODE ANNOTATED - Section 2-4-2505.

HELD: There are no statutory limitations on the salary of assistants employed by a board of county commissioners.

5 October 1979

Charles A. Graveley, Esq.
Lewis & Clark County Attorney
Lewis & Clark County Courthouse
Helena, Montana 59601

Dear Mr. Graveley:

You have requested my opinion on the following question:

Whether the salary limitations provided in section 7-4-2505, MCA, apply to administrative assistants employed by boards of county commissioners.

In pertinent part, section 7-4-2505, MCA, provides:

(1) Except as provided in subsection (2), 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 of the following officers:

- (a) sheriff;
- (b) clerk and recorder;
- (c) clerk of the district court;
- (d) treasurer;
- (e) assessor;
- (f) county attorney;
- (g) auditor.

(2)(a) Except as provided in subsection (2)(b), the salary of no deputy or assistant shall be more than 90% of the salary of the officer under whom such deputy or assistant is serving.

Subsection (2)(b) applies only to undersheriffs and deputy sheriffs.

The clear effect of section 7-4-2505(2), MCA, is to establish a maximum salary level for deputies and assistants of the county officers listed in section 7-4-2505(1), MCA. County commissioners are not included in that list. The function of a court when construing a statute is to ascertain and declare what in terms or in substance is contained in the statute and not to insert what has been omitted, Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 660 (1968). In my opinion, the salary limitations of section 7-4-2505(2), MCA, do not apply to administrative assistants employed by boards of county commissioners.

The statute authorizing county commissioners to employ personnel is section 7-5-2107, MCA, which provides:

The board of county commissioners may employ such persons as it deems necessary to assist the board in the performance of its duties. Each board may adopt a resolution defining the qualifications, duties, salary, and responsibilities of such persons. Such persons may be paid monthly, twice monthly, or every 2 weeks.

Section 7-5-2107, MCA, contains no limitation on the salary a board of county commissioners may pay its administrative assistants.

THEREFORE, IT IS MY OPINION:

There are no statutory limitations on the salary of assistants employed by a board of county commissioners.

Very truly yours,

MIKE GREELY
Attorney General