

VOLUME NO. 38

OPINION NO. 91

LEGISLATURE - Power to allow local governments to establish salary levels of officers;

LOCAL GOVERNMENT - Authority to establish salary levels for county officers;

COUNTIES - Authority to establish salary levels for officers;

COUNTY OFFICERS - Power of Legislature to allow counties to establish salary levels;

SALARIES - County officers;

1972 MONTANA CONSTITUTION - Article XI, sections 3, 4;

MONTANA CODE ANNOTATED - Title 7, chapters 3, 4.

HELD: The Montana Constitution grants the Legislature authority to allow counties to establish the salaries of elected county officials.

17 July 1980

David Wanzenried
Local Government Management Advisor
Department of Community Affairs
Capitol Station
Helena, Montana 59601

Dear Mr. Wanzenried:

You have requested my opinion whether Article XI, section 3, of the 1972 Montana Constitution prohibits the Legislature from authorizing counties to set the salaries of elected county officials.

At the present time the salaries for most county officers are determined by the Legislature, Title 7, chapter 4, part 25, MCA. However, the Constitution authorizes the Legislature to grant specific powers to counties, Article XI,

section 4(1)(b), 1972 Montana Constitution. In some instances, the Legislature has authorized county governments to set the compensation of its officers in providing for optional forms of local government. See Title 7, ch. 3, MCA. Under some optional forms of government, the establishment of certain county offices is within the discretion of the county commissioners. In those instances the commissioners or executives are empowered to establish appropriate rates of compensation. See, e.g., §§ 7-3-2132, 7-3-2133, 7-3-2134, MCA.

Article XI, section 3, 1972 Montana Constitution provides:

Forms of Government (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties. (Emphasis added.)

Subsection (2), provides that the compensation of those officers shall be provided by law. Article XI, section 4(1)(b), Montana Constitution provides:

A county has legislative, administrative, and other powers provided or implied by law.

The 1972 Constitution authorizes the Legislature to grant legislative powers to the counties and those powers of counties are to be liberally construed, Article XI, section

4(2), 1972 Montana Constitution. Thus an authorized legislative enactment by a county would satisfy the requirement that the compensation be "provided by law."

THEREFORE, IT IS MY OPINION:

The Montana Constitution grants the Legislature authority to allow counties to establish the salaries of elected county officials.

Very truly yours,

MIKE GREELY
Attorney General