

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 65

COUNTY COMMISSIONERS - Calculation of cost-of-living increase in salary;
COUNTY OFFICERS AND EMPLOYEES - Calculation of cost-of-living increase for officials;
COUNTY SUPERINTENDENT OF SCHOOLS - Calculation of cost-of-living increase in salary;
SALARIES - Calculation of cost-of-living increase for county officials;
SHERIFFS - Calculation of cost-of-living increase in salary;
MONTANA CODE ANNOTATED - Sections 7-4-2107(1), 7-4-2503, 7-4-2504.

HELD: The cost-of-living increase authorized for county officials by section 7-4-2504(1), MCA, applies only to the annual base salary plus population increment established by section 7-4-2503(1), MCA, and not to the additional sums included in the salaries of the superintendent of schools, sheriff, and commissioners under sections 7-4-2503(2) and 7-4-2107(1), MCA.

16 July 1982

Board of County Commissioners
Lake County Courthouse
Polson, Montana 59860

Gentlemen:

You have asked for my opinion on the following question:

Does the 7.28% cost-of-living increase for county officials, established according to the consumer price index formula in section 7-4-2504(1), MCA, apply to the total salary of each official, or only to the annual base salary plus population increment?

My opinion is that the cost-of-living increase is to be applied only to the annual base salary plus population increment.

In 1981, the Montana Legislature replaced the old formula for the determination of salaries for county

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officials, which was based on county population and taxable valuation, with a new system using annual base salaries plus population increments. 1981 Mont. Laws, ch. 518 (Senate Bill No. 50). Under the new formula, the salaries of most county officials are computed by adding to an "annual base salary" of either \$14,000 or \$12,000, depending on the county's classification, a "population increment" of \$10 or \$20 per 100 persons, again depending on the county's classification. § 7-4-2503(1), MCA. The salary of the county superintendent of schools is this "base plus population" figure plus \$400, § 7-4-2503(2)(a), MCA; the salary of the sheriff is "base plus population" plus \$2,000, § 7-4-2503(2)(b), MCA; in most counties the salary of each county commissioner is also "base plus population" plus \$2,000, § 7-4-2107(1), MCA.

At the same time, the Legislature replaced the former 7% yearly raise with a formula that tied any cost-of-living increase to the consumer price index. The new provision states:

The county governing body shall by resolution, on or before July 1, 1982, and on or before July 1 of each year thereafter adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, and the clerk of the district court; the county auditor (if there is one); and the county surveyor (if he receives a salary) for cost-of-living increase by adding to the annual salary computed under 7-4-2503 an increment calculated by applying to the annual salary established by 7-4-2503(1) plus previous cost-of-living increments, 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index.

§ 7-4-2504(1), MCA (emphasis added). Earlier this year, the University of Montana Bureau of Business and Economic Research determined that "70% of the last previous calendar year's consumer price index" was

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7.28%. Your question is whether this percentage should be applied only to the "base plus population" figure or should be applied to the total authorized salary including the additional sums for superintendent of schools, sheriff, and commissioners.

Under the former 7% cost-of-living provision, the 7% was to be applied to "the salary authorized for that official" during the previous year. That language was changed along with the 7% figure in 1981. The new law states clearly that the cost-of-living percentage is to be applied "to the annual salary established by 7-4-2503(1)." Section 7-4-2503(1), MCA, establishes only the "base plus population" figure, not the additional sums. The new provision is clear and unambiguous, and requires no interpretation. See Dunphy v. Anaconda Co., 151 Mont. 76, 79-81, 438 P.2d 660, 662 (1968). The 7.28% cost-of-living increase does not apply to the additional sums included in the salaries of the superintendent of schools, sheriff, and commissioners. This means that every county official in any given county receives the same dollar amount cost-of-living increase.

The Legislature's intent in this case is not only apparent from the plain language of the statute, but is also supported by the minutes of the legislative committees that considered Senate Bill No. 50. One of the main purposes of the Legislature in adopting Senate Bill No. 50 was to eliminate the inequities in salaries across the State, which had resulted from the heavy emphasis under the old system on taxable valuation, and from cost-of-living increases that were based on actual salary. See IV Minutes, House Local Government Committee, 3/12/81, p. 8; 3/26/81, pp. 11, 12. Sheriff Hammermeister, who chaired the County Compensation Board, which proposed the original version of Senate Bill No. 50, explained at one hearing:

The intent of the County Compensation Board was that the base for all elected officials starts out at the \$14,000 figure. We also want this cost of living to be kept so that the smallest county would get exactly the same cost-of-living raise as the largest county. A person who gets paid a good salary gets a high increase on a percentage basis, but a person who is paid nothing and you get a percentage

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of that you still get nothing. They average out all the monies for cost-of-living and give everyone the same amount of dollars. That was the intent. By basing the cost-of-living [on] one specific figure, \$14,000, then every county official would get the same amount of cost-of-living increase.

IV Minutes, House Local Government Committee, 3/12/81, p. 8; see also County Compensation Board Report for Senate Bill 50, p. 6. While the House Local Government Committee amended the Board's proposal to allow the cost-of-living increase to be based on annual base salary plus population increment, it did not go so far as to base the increase on total salary, despite the fact that witnesses asked the Committee to do so. See IV Minutes, House Local Government Committee, 3/12/81, p. 8 (John Scully representing the Montana Sheriffs and Peace Officers Association) and testimony on Senate Bill 50 of William L. Romine (representing the Montana Clerk and Recorders Association). The Legislature could have re-adopted language applying the cost-of-living increase to "the salary authorized for that official" during the previous year, but failed to do so.

THEREFORE, IT IS MY OPINION:

The cost-of-living increase authorized for county officials by section 7-4-2504(1), MCA, applies only to the annual base salary plus population increment established by section 7-4-2503(1), MCA, and not to the additional sums included in the salaries of the superintendent of schools, sheriff, and commissioners under sections 7-4-2503(2) and 7-4-2107(1), MCA.

Very truly yours,

MIKE GREELY
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