

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 7

CLERKS - Clerk and Recorder's compensation for service as election administrator;  
COUNTY OFFICERS AND EMPLOYEES - Clerk and Recorder's compensation for service as election administrator;  
PUBLIC OFFICERS - Clerk and Recorder's compensation for service as election administrator;  
SALARIES - Clerk and Recorder's compensation for service as election administrator;  
MONTANA CODE ANNOTATED - Sections 7-4-2503, 13-1-301;  
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 63, 37 Op. Att'y Gen. No. 84.

OPINIONS OF THE ATTORNEY GENERAL

HELD: The board of county commissioners may not provide additional compensation to a county clerk and recorder who is an election administrator in addition to the clerk's salary established by section 7-4-2503, MCA.

3 March 1981

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

Dear Mr. Graveley:

You have requested my opinion concerning the availability of extra compensation for a clerk and recorder who also serves as an election administrator. Specifically your question is:

Can a board of county commissioners provide additional compensation to a county clerk and recorder who is the election administrator, in addition to the clerk's salary established by section 7-4-2503, MCA?

I have concluded that it cannot.

The general rule, which has been followed in Montana for many years, is that "public officials can only claim compensation for services rendered where the compensation is provided by law...." State ex rel. Matson v. O'Hern, 104 Mont. 126, 142, 65 P.2d 619 (1937). Public policy disdains increasing the salary of a public official for performing services imposed on such public officer by law. See, e.g., 37 Op. Att'y Gen. No. 63 (1977); 37 Op. Att'y Gen. No. 84 (1977).

Section 13-1-301, MCA, provides in pertinent part:

The county clerk and recorder of each county is the election administrator unless the governing body of the county designates another official or appoints an election administrator.

Section 7-4-2503, MCA, establishes the salary of a county clerk. In the absence of a specific grant of

OPINIONS OF THE ATTORNEY GENERAL

authority to allow additional compensation, section 7-4-2503, MCA, controls and no additional compensation is allowed. The only apparent way to secure additional compensation for the position of election administrator is to appoint an election administrator who is not the clerk and recorder.

THEREFORE, IT IS MY OPINION:

The board of county commissioners may not provide additional compensation to a county clerk and recorder who is an election administrator in addition to the clerk's salary established by section 7-4-2503, MCA.

Very truly yours,

MIKE GREELY  
Attorney General