

COUNTIES - Budgeting;
COUNTIES - Setting officials' salaries;
COUNTY OFFICERS AND EMPLOYEES - Setting officials' salaries;
COUNTY OFFICERS AND EMPLOYEES - Time for setting officials' salaries;
COUNTY OFFICIALS - Setting officials' salaries;
COUNTY OFFICIALS - Time for setting officials' salaries;
ELECTED OFFICIALS - Setting county officials' salaries;
ELECTED OFFICIALS - Time for setting county officials' salaries;
SALARIES - Setting county officials' salaries;
MONTANA CODE ANNOTATED - Sections 7-1-2111, 7-1-2112, 7-4-2503, 7-4-2503(1), 7-4-2504, 7-6-2322, 7-6-2324, 7-6-2325;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 101 (1977).

HELD: When a county's classification changes according to section 7-1-2111, MCA, the salaries of the county officials listed in section 7-4-2503(1), MCA, must also change. The salaries must change as of July 1 of the following year, with the onset of a new fiscal year for the county.

13 November 1984

Mark L. Stermitz
Judith Basin County Attorney
P.O. Box 557
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Dear Mr. Stermitz:

You have requested my opinion concerning the computation of certain county officials' salaries according to section 7-4-2503, MCA. Specifically, you asked whether a decrease or increase in taxable valuation and the accompanying change in the county classification, pursuant to section 7-1-2111, MCA, would result in a decrease or increase in the salaries under section 7-4-2503, MCA, and if so, when such decrease or increase

would be effective. I conclude that a change in classification would require a change in salary which would become effective for the following fiscal year.

Certain county officials receive salaries computed according to sections 7-4-2503 and 7-4-2504, MCA, both of which were amended in 1981. Section 7-4-2503, MCA, provides:

Salary schedule for certain county officers.

(1) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, part-time county attorney, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties wherein such office is authorized, for the fiscal year beginning July 1, 1981, is computed by adding the annual base salary of:

(a) \$14,000 for the counties of the first through fifth class to the population increment of \$10 for each 100 persons or major fraction thereof included in the county's population as determined by the 1980 federal decennial census; or

(b) \$12,000 for counties of the sixth and seventh class to the population increment of \$20 per 100 persons or major fraction thereof in the county's population as determined by the 1980 federal decennial census.

Only the county officials listed in subsection (1) of section 7-4-2503, MCA, are the subject of this opinion, as they are the only officials whose salaries are computed according to county classes. Only that subsection links the base salaries to the classes set in section 7-1-2111, MCA.

Section 7-1-2111, MCA, provides:

Classification of counties. (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the several counties of this

state shall be classified according to that percentage of the true and full valuation of the property therein upon which the tax levy is made, as follows:

....

This section goes on to designate the "first class" through the "seventh class." It is these classes to which section 7-4-2503(1), MCA, quoted above, refers. These classes are used as a basis for computing the salaries of certain county officials.

Your question concerns the effect of a change of class, pursuant to section 7-1-2111, MCA, on the salaries of the officials listed in section 7-4-2503(1), MCA. Because the Legislature, through the clear language of section 7-4-2503, MCA, has evidenced its intent to base certain salaries on the county classifications, it is logical to conclude that any change in the classification would result in a change in the salaries. Every year the salaries are recomputed according to sections 7-4-2503 and 7-4-2504, MCA.

Less apparent is the Legislature's intent as to when such a change is to occur. Neither section 7-1-2111, MCA, nor section 7-4-2503, MCA, specifically refers to a date upon which such a change in salaries is to take effect. Section 7-4-2503, MCA, refers only to the fiscal year beginning July 1 of each year. As to a change in classification of a county, section 7-1-2112, MCA, provides:

Designation of county classification by county commissioners. (1) The several boards of county commissioners must, at their regular session in September of each year, make an order designating the class to which such county belongs, as determined by the taxable valuation of such county for the year in which such order is made, under and in accordance with the provisions of 7-1-2111.

(2) Such classification shall not change the government of the county then in existence until the next succeeding first Monday in January. [Emphasis added.]

A change in the salaries of county officials covered by section 7-4-2503, MCA, must logically occur at the beginning of the next fiscal year, as a change prior to the following fiscal year would require a change in the county's budget. Section 7-1-2112(1), MCA, requires the county commissioners to make a classification order at their September meeting. By the time the order is issued in September, the budget for the county's fiscal year of July 1 to June 30 will have been set. See § 7-6-2322, MCA. The classification may precede the final setting of the budget, depending on when the commissioners' meeting is held in September, but such timing is not assured. Moreover, section 7-1-2112(2), MCA, states that a change in classification is not to change the county government until January of the following year. Even if the classification order preceded the setting of the budget, the county government is not to change until the following January.

There are only limited provisions for amendment of the budget in the middle of a fiscal year. See § 7-6-2324, MCA. There is no statute which allows an amendment of the budget for an increase in salary due to a change in county classification. Furthermore, section 7-6-2325, MCA, provides that although certain transfers or revisions may be made, "no salary shall be increased above the amount appropriated therefor." Any salary change due to a change of county classification must not affect the salaries of the county officials listed in section 7-4-2503(1), MCA, until the following fiscal year.

An Attorney General's Opinion issued December 20, 1977, concluded, based on the Montana Supreme Court case of Brown v. Board of County Commissioners, 165 Mont. 391, 529 P.2d 328 (1974), that county officials' salaries must be computed according to the taxable valuation made prior to July 1 of the year in question and that any change in salary must be made on July 1 or must be applied retroactively to that date. 37 Op. Att'y Gen. No. 101. I conclude that, due to the amendment in 1981 of section 7-4-2503, MCA, this Attorney General's Opinion and the Brown case are not applicable to determine the issue at hand. The statutory scheme for determining the salaries of the county officials listed in section 7-4-2503(1), MCA, in effect prior to the 1981 amendments, was vastly different from the current scheme and provides little insight into the problems which have

arisen with the current versions of sections 7-4-2503 and 7-4-2504, MCA.

The clear intent of the Legislature, as evidenced by the language of section 7-4-2503, MCA, is that when a county's classification changes according to section 7-1-2111, MCA, the salaries of the county officials listed in section 7-4-2503(1), MCA, must also change. Because the classification will not change until September of the year of the change, after the budget has been set by the county, and because section 7-1-2112, MCA, states that the county government is not to change until January of the following year, the salaries must not change until July 1 of the following year, with the onset of a new fiscal year for the county.

THEREFORE, IT IS MY OPINION:

When a county's classification changes according to section 7-1-2111, MCA, the salaries of the county officials listed in section 7-4-2503(1), MCA, must also change. The salaries must change as of July 1 of the following year, with the onset of a new fiscal year for the county.

Very truly yours,

MIKE GREELY
Attorney General