

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 76

COUNTIES - Effect of pay freeze on longevity pay for deputy sheriffs;
COUNTY COMMISSIONERS - Effect of pay freeze on longevity pay for deputy sheriffs;
COUNTY OFFICERS AND EMPLOYEES - Effect of pay freeze on longevity pay for deputy sheriffs;
PEACE OFFICERS - Effect of pay freeze on longevity pay for deputy sheriffs;
SALARIES - Effect of pay freeze on longevity pay for deputy sheriffs;
SHERIFFS - Effect of pay freeze on longevity pay for deputy sheriffs;
MONTANA CODE ANNOTATED - Sections 1-2-101, 3-10-207, 7-4-2107, 7-4-2502 to 7-4-2505, 7-4-2510.

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- HELD: 1. If the salary of a deputy sheriff is set at the same level as for the prior fiscal year, that year may not be used when calculating longevity pay and the deputy's longevity pay is, in effect, frozen.
2. If the pay freeze is lifted and the salary increased, the deputy's longevity pay does not include additional longevity pay for the time period during which the salary was set at the same level as the prior fiscal year.

28 March 1988

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Dawson County Courthouse
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Patrick L. Paul
Cascade County Attorney
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Gentlemen:

You have asked for my opinion on the following questions:

1. Under section 7-4-2510, MCA, if the county commissioners set the salary for a deputy sheriff at the same level of salary as the prior fiscal year, is the deputy's longevity pay frozen?
2. In the event the county commissioners lift the pay freeze and authorize a cost-of-living increase, does the deputy's longevity pay include additional longevity pay for the time period during which his or her salary was frozen?

The county commissioners may set their salaries and all other county officials' salaries at the same level as the prior fiscal year. §§ 3-10-207, 7-4-2107, 7-4-2502 to 2505, MCA. According to section 7-4-2508, MCA, the sheriff is to set the salary of a deputy sheriff as a percentage of the sheriff's income.

With regard to longevity payments, section 7-4-2510, MCA, expressly provides that those years of service

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during which the salary is set at the same level as the prior fiscal year "may not be included in any calculation of longevity increases."

Beginning on the date of his first anniversary of employment with the department and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for each year of service with the department, but years of service during any year in which the salary was set at the same level as the salary of the prior fiscal year may not be included in any calculation of longevity increases. This payment shall be made in equal monthly installments. [Emphasis added.]

There is no provision for making up lost longevity pay.

Where the language of a statute is plain, unambiguous, direct, and certain, the statute speaks for itself and there is nothing to be construed. State v. Hubbard, 39 St. Rptr. 1608, 1611, 649 P.2d 1331, 1333 (1982). In such a case, my function is simply to ascertain and declare what is contained in the statute, not to insert what has been omitted or omit what has been inserted. § 1-2-101, MCA. Reese v. Reese, 196 Mont. 101, 104, 637 P.2d 1183, 1185 (1981).

If the salary of a deputy is set at the same level as the salary of the prior fiscal year, the deputy's longevity pay is also, in effect, frozen, because that year of service may not be included in any calculation of longevity increases. Even when the pay freeze ends, the year or years that the deputy's salary was set at the same level as in the prior fiscal year may not be used to calculate the deputy's longevity pay. Pursuant to section 7-4-2510, MCA, loss of an increase in longevity pay due to a pay freeze is permanent.

THEREFORE, IT IS MY OPINION:

1. If the salary of a deputy sheriff is set at the same level as for the prior fiscal year, that year may not be used when calculating longevity pay and the deputy's longevity pay is, in effect, frozen.
2. If the pay freeze is lifted and the salary increased, the deputy's longevity pay does not include additional longevity pay for the time

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period during which the salary was set at the same level as the prior fiscal year.

Very truly yours,

MIKE GREELY
Attorney General