

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 85

COUNTIES - Adjustment to salaries of county officials due to county reclassification;
COUNTY ATTORNEYS - Salary adjustment due to county reclassification;
COUNTY COMMISSIONERS - Salary adjustment due to county reclassification;
COUNTY OFFICERS AND EMPLOYEES - Salary adjustment due to county reclassification;
SALARIES - Salary adjustment due to county reclassification;
MONTANA CODE ANNOTATED - Sections 7-1-2111, 7-4-2107, 7-4-2503, 7-4-2504(2);
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 6 (1985), 40 Op. Att'y Gen. No. 81 (1984).

HELD: 1. When a county's classification under section 7-1-2111, MCA, changes, the salaries of county commissioners, the county attorney, and county officials listed in section 7-4-2503(1), MCA, must be adjusted as of July 1 of the following year.

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2. When a county's classification under section 7-1-2111, MCA, changes, the adjustment to salaries of county commissioners is computed according to section 7-4-2107, MCA; of a part-time county attorney, according to section 7-4-2503(3), MCA; and of county officials listed in section 7-4-2503(1), MCA, according to the provisions in that section.
3. Section 7-4-2504(2), MCA, is not applicable to salary adjustments due to reclassifications of counties. A county official's base salary established under this section on July 1, 1981, lasts only until county reclassification necessitates a salary adjustment in accordance with section 7-4-2503, MCA.

18 May 1988

Daniel L. Schwarz
Powder River County Attorney
Powder River County Courthouse
Broadus MT 59317

Dear Mr. Schwarz:

You have requested my opinion concerning the following questions:

1. At what date, if any, should the salaries of county commissioners, part-time county attorneys, and elected officials be adjusted to reflect a change in county classification?
2. How are the salaries of the county commissioners and elected officials to be computed upon the county's reclassification?
3. How does section 7-4-2504(2), MCA, affect adjustments in salaries made pursuant to county reclassification?

Your request arises from the decreasing taxable valuation of property in Powder River County and the resulting reclassification of the county. Under section 7-1-2111, MCA, counties are classified from first-class to seventh-class counties depending on the taxable valuation of the property therein. Counties with the highest taxable valuation of property are classified as

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first class, and those with the lowest as seventh class. In fiscal year 1986-87, Powder River County was a Class 2 county. In 1987-88, the county was reclassified as Class 4, and in fiscal year 1988-89, it is projected that the county will be reclassified as Class 5.

With respect to your first question, I held in 40 Op. Att'y Gen. No. 81 at 324 (1984) that when a county's classification changes, the salaries of the county officials listed in section 7-4-2503(1), MCA, must be adjusted as of July 1 of the following year, with the onset of the county's new fiscal year. In 41 Op. Att'y Gen. No. 6 (1985) I applied the same holding to adjustments of county commissioners' salaries, because the statute governing county commissioners' salaries is substantively connected to sections 7-1-2111, MCA (governing county classification), and 7-4-2503, MCA (governing salaries for certain county officers). The rationale of those opinions applies to adjustments in county attorneys' salaries under section 7-4-2503(3), MCA. Therefore, the date of adjustment to the salaries of county commissioners, a part-time county attorney, and elected officials listed in section 7-4-2503(1), MCA, is July 1, the onset of the fiscal year following the county's reclassification.

With respect to your second question, the salary of county commissioners is governed by section 7-4-2107, MCA, which provides:

Compensation of county commissioners.

(1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive an annual salary equal to the annual salary established in 7-4-2503 for the clerk and recorder plus \$2,000, but the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that level is lower than the level required by this subsection.

(2) Each member of the board in all other counties is entitled to a salary for each day in which he is actually and necessarily engaged in the performance of board duties as set by resolution of the board. For the fiscal year beginning July 1, 1985, the salary is \$60 a day. Thereafter, on or before July 1 of each year, the county commission shall fix a cost-of-living adjusted daily salary by

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adding to the amount of \$60 an increment calculated as provided in 7-4-2504, but the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that level is lower than the level required by this subsection.

(3) This section does not apply to counties that have adopted a charter form of government.

Since Powder River County has not adopted a charter form of government, the county commissioners' salaries must be computed in accordance with this section. Thus, after the county was classified as Class 4, the commissioners' salaries remained the same as when the county was classified as Class 2. § 7-4-2107(1), MCA. If the county is reclassified as Class 5, on July 1 of the next fiscal year, the commissioners' salaries must be adjusted according to subsection (2) of section 7-4-2107, MCA.

With respect to county officers listed in section 7-4-2503(1), MCA, their salary computations remain the same for Classes 1 through 5. § 7-4-2503(1), (2), MCA.

The salary for a part-time county attorney is governed by section 7-4-2503(3), MCA, which provides in pertinent part:

In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney.

§ 7-4-2503(3)(a), MCA. Thus, when the county's classification changed from Class 2 to Class 4, the part-time county attorney's salary was required to be adjusted from 60 percent of the annual salary of a full-time county attorney to 50 percent. The salary of the county attorney will not be changed by the reclassification if the county is reclassified from a fourth- to a fifth-class county. § 7-4-2503(3)(a), MCA.

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In your third question, you asked whether section 7-4-2504(2), MCA, applies to the salaries if they decrease as the result of a county reclassification.

Section 7-4-2504(2), MCA, states:

If the application of 7-4-2503 does not qualify a county official for a salary increase of at least 7% on July 1, 1981, his salary on that date shall be increased by an amount sufficient to provide him total salary equal to 7% more than during the previous year. [Emphasis added.]

The language of this section confines its application to the initial computation of salaries in accordance with the 1981 amendments to the county officers' compensation statutes, §§ 7-4-2503 to 2505, MCA; the salary increase under section 7-4-2504(2), MCA, occurred on July 1, 1981. A statute must be interpreted according to the clear meaning of the words used therein. Rierson v. State, 188 Mont. 522, 614 P.2d 1020, 1023, on rehearing, 622 P.2d 195 (1980). Moreover, the statute was part of a lengthy bill that was recommended to the 1981 Legislature by a County Compensation Board, established by the 46th Legislative Assembly. In its written report to the Legislature, the Board referred to this portion of the bill as a "grandfather clause" to protect some of the counties from taking salary cuts. The report stated that the provision was only to be in effect for one fiscal year. Report of County Compensation Board, hearing on S.B. 50 before the Senate Committee on Local Government (1/17/81).

Section 7-4-2504(2), MCA, thus created a new salary base on July 1, 1981, for those county officials whose salaries would not have increased by 7 percent on July 1, 1981, under the formulas provided in section 7-4-2503, MCA. However, that salary base lasts only until county reclassification necessitates a salary adjustment in accordance with section 7-4-2503, MCA. Section 7-4-2504(2), MCA, has no application to the current situation where county reclassification results in a decrease in a county official's salary.

THEREFORE, IT IS MY OPINION:

1. When a county's classification under section 7-1-2111, MCA, changes, the salaries of county commissioners, the county attorney, and county officials listed in section 7-4-2503(1), MCA, must be adjusted as of July 1 of the following year.

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2. When a county's classification under section 7-1-2111, MCA, changes, the adjustment to salaries of county commissioners is computed according to section 7-4-2107, MCA; of a part-time county attorney, according to section 7-4-2503(3), MCA; and of county officials listed in section 7-4-2503(1), according to the provisions in that section.
3. Section 7-4-2504(2), MCA, is not applicable to salary adjustments due to reclassifications of counties. A county official's base salary established under this section on July 1, 1981, lasts only until county reclassification necessitates a salary adjustment in accordance with section 7-4-2503, MCA.

Very truly yours,

MIKE GREELY
Attorney General