

VOLUME NO. 43

OPINION NO. 34

COUNTY COMMISSIONERS - Authority to modify method for calculating deputy sheriff longevity pay through collective bargaining;

COUNTY OFFICERS AND EMPLOYEES - County commissioners' authority to modify method for calculating deputy sheriff longevity pay through collective bargaining;

EMPLOYEES, PUBLIC - County commissioners' authority to modify method for calculating deputy sheriff longevity pay through collective bargaining;

LABOR RELATIONS - County commissioners' authority to modify method for calculating deputy sheriff longevity pay through collective bargaining;
SALARIES - County commissioners' authority to modify method for calculating deputy sheriff longevity pay through collective bargaining;
SHERIFFS - County commissioners' authority to modify method for calculating deputy sheriff longevity pay through collective bargaining;
MONTANA CODE ANNOTATED (1987) - Section 7-4-2505;
MONTANA CODE ANNOTATED (1981) - Section 7-4-2510;
MONTANA CODE ANNOTATED (1978) - Sections 7-4-2507, 7-4-2510, 39-3-401 to 39-3-408, 39-31-304;
MONTANA CODES ANNOTATED, 1905 - Political Code § 4596;
MONTANA LAWS OF 1986 (June Spec. Sess.) - Chapter 12;
MONTANA LAWS OF 1981 - Chapter 603;
MONTANA LAWS OF 1971 - Chapter 417;
MONTANA LAWS OF 1923 - Chapter 82;
MONTANA LAWS OF 1919 - Chapter 222;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 76 (1988), 42 Op. Att'y Gen. No. 37 (1987), 38 Op. Att'y Gen. No. 116 (1980), 38 Op. Att'y Gen. No. 20 (1979), 37 Op. Att'y Gen. No. 113 (1978);
REVISED CODES OF MONTANA, 1947 - Section 25-604;
REVISED CODES OF MONTANA, 1937 - Section 4874;
REVISED CODES OF MONTANA, 1907 - Section 3118.

HELD: The method for calculating longevity pay increases for undersheriffs and deputy sheriffs in section 7-4-2510, MCA, is mandatory and may not be altered through collective bargaining.

September 15, 1989

Mike Salvagni
Gallatin County Attorney
Law and Justice Center
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Dear Mr. Salvagni:

You have requested my opinion concerning the following question:

Does section 7-4-2510, MCA, preclude a board of county commissioners from complying with a collective bargaining agreement provision which authorizes longevity increases to deputy sheriffs predicated on all years of service, including any years during which a deputy sheriff's base salary was set at the same level as in the previous fiscal year, when such agreement was entered into after July 3, 1986?

Because section 7-4-2510, MCA, constitutes a mandatory condition of employment from which a board of county commissioners has no authority to deviate, I conclude that, under the facts here, the collective bargaining agreement provision is unenforceable to the extent it permits inclusion of service years for the purpose of calculating longevity pay increases expressly excluded under the statute.

Gallatin County and the Gallatin County Deputy Sheriffs' Association have entered into a series of collective bargaining agreements, the latest of which commenced on July 1, 1988. The present agreement contains the following provision:

All sworn deputies shall be paid longevity pay which shall be added to their base wages at the rate of one percent (1%) of the minimum base annual salary for each year of service with the department and shall be calculated as of the anniversary date of hiring. This payment shall be made in equal monthly installments.

The provision was taken from 1981 Montana Laws, chapter 603, section 5 (codified at § 7-4-2510, MCA (1981)) which, prior to amendment in 1986, stated:

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. This payment shall be made in equal monthly installments.

1986 Montana Laws, chapter 12, section 6 (June Spec. Sess.) (codified at § 7-4-2510, MCA), however, added the following clause at the conclusion of the first sentence of the above: "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." The amended provision became effective on July 3, 1986. 1986 Mont. Laws, ch. 12, § 7 (June Spec. Sess.). The issue of whether section 7-4-2510, MCA, as amended or the collective bargaining agreement provision governs has arisen because the base salaries of the county's deputy sheriffs remained unchanged during fiscal year 1987 from the previous fiscal year, and the parties disagree over the appropriate method for calculating longevity pay increases for fiscal year 1990.

Your question essentially presents the recurring issue of whether a public employer is foreclosed from entering into or giving effect to a collective bargaining agreement provision which differs from a statute dealing with the same condition or term of employment. *E.g.*, 42 Op. Att'y Gen. No. 37

(1987), 38 Op. Att'y Gen. No. 116 at 408 (1980), 38 Op. Att'y Gen. No. 20 at 71 (1979), 37 Op. Att'y Gen. No. 113 at 486 (1978). Resolution of this issue typically requires determining whether the involved statutory provision circumscribes the public employer's discretion with respect to establishing the particular employment condition--i.e., whether the Legislature has decided to impose an employment standard which, at least among comparably situated governmental entities, is to be uniform. Attorney General Greeley thus stated as the general rule "that, when a particular employment condition for public employees has been legislatively set, it may not be modified through collective bargaining without statutory authorization." 42 Op. Att'y Gen. No. 37, slip op. at 2. That rule grows out of the canon of statutory construction giving controlling significance to a specific legislative enactment where a conflict exists with a more general statutory provision or scheme. *Ibid.* Instantly, the specific provision is section 7-4-2510, MCA, and the general provision is section 39-31-304(2), MCA, obligating a public employer to bargain in good faith over wages, hours, fringe benefits and other conditions of employment.

The maximum salary which undersheriffs or deputy sheriffs may receive has been statutorily prescribed since shortly after statehood. Pol. Code § 4596, Mont. Codes Ann. 1905; § 3118, R.C.M. 1907; § 4874, R.C.M. 1935; § 25-604, R.C.M. 1947; see Jobb v. Meagher County, 20 Mont. 424, 426-30, 51 P. 1034, 1035-36 (1898) (describing early history of statutory regulation of deputy sheriff compensation). These provisions, except for a period between 1919 (1919 Mont. Laws, ch. 222) and 1923 (1923 Mont. Laws, ch. 82), applied to all county deputy officers or assistants and, in relevant part, established maximum compensation levels. E.g., State ex rel. Thompson v. Gallatin County, 120 Mont. 263, 269, 184 P.2d 998, 1001 (1947); Modesitt v. Flathead County, 57 Mont. 216, 187 P. 911 (1929); Penwell v. Board of County Commissioners, 23 Mont. 351, 357-58, 59 P. 167, 169 (1899). The Montana Supreme Court accordingly held in City of Billings v. Smith, 158 Mont. 197, 490 P.2d 221 (1971), that deputy sheriffs were not entitled to overtime compensation since section 25-604, R.C.M. 1947, later codified in section 7-4-2505, MCA (1978), explicitly set permissible salary ranges for deputies which were not altered by the provisions of the Montana Minimum Overtime Wage Compensation Act, 1971 Mont. Laws, ch. 417 (codified as amended at §§ 39-3-401 to 408, MCA).

Ten years later in 1981 Montana Laws, chapter 603 (codified as amended at §§ 7-4-2507 to 2510, MCA), the Legislature responded to City of Billings by authorizing county commissioners to establish through resolution "that any undersheriff or deputy sheriff who works in excess of his regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by [the] board of county commissioners." 1981 Mont. Laws, ch. 603, § 4 (codified at § 7-4-2509(2), MCA); see Feb. 20, 1981 Minutes of House State Administration Committee at 3; March 18, 1981 Minutes of Senate Local Government Committee at 1-2. The 1981 statute also provided yearly one percent longevity increases to the minimum base

annual salaries of undersheriffs and deputy sheriffs, based upon all years of service with the particular sheriff's department. 1981 Mont. Laws, ch. 603, § 5 (codified as amended at § 7-4-2510, MCA). This provision, which was quoted earlier, was thereafter amended to its present form in 1986. The effect of the amendment is to permit county commissioners to freeze an undersheriff's or deputy sheriff's base salary at its current level and, once that discretion has been exercised, to mandate exclusion of any years when no increase in salary occurred from calculation of that service on which longevity credits are predicated. See 42 Op. Att'y Gen. No. 76 (1988).

It is clear, therefore, that compensation rates for deputy sheriffs have been statutorily controlled for almost 100 years. These statutes have been construed without exception as exclusive and mandatory. Indeed, 1981 Montana Laws, chapter 603, section 7 (codified at § 7-4-2507, MCA) expressly states that, "[i]f there is a conflict between 7-4-2508 through 7-4-2510 and any other law, 7-4-2508 through 7-4-2510 govern with respect to undersheriffs and deputy sheriffs." There can thus be no legitimate dispute that under the circumstances here the county commissioners lacked discretion to enter into a collective bargaining agreement provision that conflicted with section 7-4-2510, MCA. Consequently, to the extent the longevity pay provision nominally includes credits for all years of departmental service irrespective of whether an increase in base annual salary occurred, it misstates the law controlling the parties at the time the agreement became effective and is enforceable only insofar as capable of an application consistent with section 7-4-2510, MCA. Because that statutory provision excludes service years when no base salary increase occurred for purposes of longevity pay calculation, fiscal year 1987 may not be included in determining such increase for fiscal year 1990.

I note, finally, that no impairment of contracts issue is presented under Article I, section 10, clause 1 of the United States Constitution or Article II, section 31 of the Montana Constitution since the involved collective bargaining agreement was executed after the effective date of the 1986 amendment to section 7-4-2510, MCA. See Neel v. First Federal Savings and Loan Association, 207 Mont. 376, 388, 675 P.2d 96, 103 (1984) ("laws existing at the date a contract is executed are as much a part of the contract as if set forth therein"); Gagnon v. City of Butte, 75 Mont. 279, 289, 243 P. 1085, 1088 (1926) ("the obligation of a contract is measured by the standard of the laws in force at the time it was entered into, and its performance is to be regulated by the terms and rules which they prescribe").

THEREFORE, IT IS MY OPINION:

The method for calculating longevity pay increases for undersheriffs and deputy sheriffs in section 7-4-2510, MCA, is mandatory and may not be altered through collective bargaining.

Sincerely,

MARC RACICOT
Attorney General