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VOLUME NO. 46

OPINION NO. 6

COUNTY ATTORNEYS - Salary of office manager/secretary;  
COUNTY COMMISSIONERS - Power to set salary of persons hired to assist county officers;  
COUNTY OFFICERS AND EMPLOYEES - Salary of office manager/ secretary hired to assist county attorney;  
PUBLIC EMPLOYEES - Salary of office manager/secretary hired to assist county attorney;  
SALARIES - Salary of office manager/secretary hired to assist county attorney;  
MONTANA CODE ANNOTATED - Sections 7-4-2401, -2403, -2502, -2503, -2505;  
MONTANA CODES ANNOTATED, 1905 - Political Code § 4596;  
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 77 (1990).

- HELD: 1. An office manager/secretary hired as a county employee to assist the county attorney is an "assistant" whose compensation may be set by the county commissioners under Mont. Code Ann. § 7-4-2505.
2. An "assistant" covered by Mont. Code Ann. § 7-4-2505(1) must be paid a salary to be determined by the commissioners which must be no greater than 90 percent of the principal officer's salary, absent a specific provision allowing greater compensation.

July 6, 1995

Mr. Russell R. Andrews  
Teton County Attorney  
P.O. Box 899  
Choteau, MT 59422

Dear Mr. Andrews:

You have requested my opinion on the following questions:

1. Is the County Attorney's office manager/secretary an "assistant" to the county attorney for purposes of Mont. Code Ann. § 7-4-2505?

2. If so, does the statute establish a maximum compensation level at not more than 90 percent of the county attorney's salary?

Your questions require a construction of Mont. Code Ann. § 7-4-2505 and associated statutes. Section 7-4-2505 provides in pertinent part:

**7-4-2505. Amount of compensation for deputies and assistants.** (1) Subject to subsection (2), the boards of county commissioners in the several counties in the state shall fix the compensation allowed any deputy or assistant of the following officers:

- (a) clerk and recorder;
- (b) clerk of the district court;
- (c) treasurer;
- (d) county attorney;
- (e) auditor.

(2) (a) The salary of a deputy or an assistant listed in subsection (1), other than a deputy county attorney, may not be more than 90% of the salary of the officer under whom the deputy or assistant is serving.

The term "assistant" also appears in Mont. Code Ann. § 7-4-2502(1), which provides that the county commissioners may determine that county officers and their "assistants" be paid monthly, semimonthly, or biweekly, and in Mont. Code Ann. § 7-4-2401, which allows a county officer to appoint "as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of his office." None of these statutes defines the term "assistant," and no case law or prior Attorney General's Opinion sheds any direct light on the interpretation of the term.

Courts in other states have found that the terms "assistant" and "deputy" are not synonymous. Montana law provides that a deputy has the authority to exercise any power which the principal officer may exercise. Mont. Code Ann. § 7-4-2403; see 43 Op. Att'y Gen. No. 77 (1990). Cases from other jurisdictions hold that an "assistant" need not be a deputy, but rather may be any person who aids or assists the principal officer in performing the functions of the office. See, e.g., United States v. Adams, 24 F. 348, 351 (D. Or. 1885). This case must be presumed to have expressed the general rule of law at the time the Montana statutes at issue here were adopted, and I must assume that the legislature was aware of the law when it adopted the statutory language. In re Wilson's Estate, 102 Mont. 178, 194, 56 P.2d 733, 737 (1936).

A second rule of statutory construction also counsels in favor of the view that "assistant" and "deputy" are not coterminous words. The rule has been expressed in various ways. In construing a statute, every word should be given effect if possible. Fletcher v. Paige, 124 Mont. 114, 119, 220 P.2d 484, 486 (1950). A construction which gives effect to all parts of a statute is favored over one which results in the nullification of part. It should not be assumed that the legislature added surplus words to a statute. State v. Berger, 259 Mont. 364, 367, 856 P.2d 552, 554 (1993). The common thread of these rules of construction is the requirement that a statute be construed so that all of its parts have effect, if such a construction is reasonably possible. Continental Oil Co. v. Board of Labor Appeals, 178 Mont. 143, 151, 582 P.2d 1236, 1241 (1978).

The provision of Mont. Code Ann. § 7-4-2505 giving the commissioners power to set salaries has applied to both "deputies" and "assistants" since the statute was first adopted in 1895. Mont. Code § 4596 (1895). I must presume that the legislature intended to apply the statute to persons other than those sworn as deputy officers, since to do otherwise would render the term "assistant" meaningless.

I conclude that the intent of the legislature was to give the commissioners authority to set the salary, within the limits set forth in subsection (2) of Mont. Code Ann. § 7-4-2505, of all county employees hired by county officers to assist them in the performance of their duties. I note here that the statute must be read to be limited to persons who serve as employees of the county. Independent contractors or consultants cannot be considered "assistants" for purposes of the statute, since such persons would not be entitled to a "salary" from the county treasury. So construed, the statute would apply to an office manager/secretary hired as a county employee to assist the county attorney.

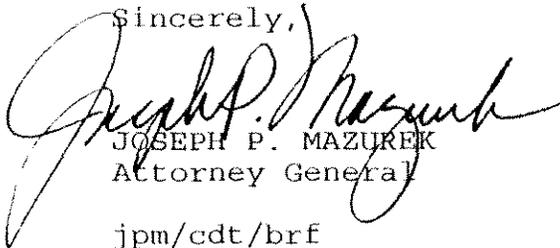
Your second question is simply answered by reference to the statute. Mont. Code Ann. § 7-4-2505(2) places on the salary of a "deputy or assistant" covered by the statute an upper limit of 90 percent of the principal officer's salary. I note that there is no statutory floor, and the commissioners have the power to set an "assistant's" salary anywhere under the ceiling, constrained only by federal or state minimum wage laws, applicable collective bargaining agreements, or specific statutes defining the compensation of deputies or assistants, e.g., Mont. Code Ann. § 7-4-2503(3)(d) (providing certain salary benefits for deputy county attorneys); see generally Farrell v. Yellowstone County, 68 Mont. 313, 316, 218 P. 559, 560 (1923) (absent statute, commissioners have discretion to set deputy salary at the level they deem appropriate).

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THEREFORE, IT IS MY OPINION:

1. An office manager/secretary hired as a county employee to assist the county attorney is an "assistant" whose compensation may be set by the county commissioners under Mont. Code Ann. § 7-4-2505.
2. An "assistant" covered by Mont. Code Ann. § 7-4-2505(1) must be paid a salary to be determined by the commissioners which must be no greater than 90 percent of the principal officer's salary, absent a specific provision allowing greater compensation.

Sincerely,



JOSEPH P. MAZUREK  
Attorney General

jpm/cdt/brf