

VOLUME NO. 33

Opinion No. 32

OFFICES AND OFFICERS - County, Deputies and assistants, salary; — SALARY - County officials, Deputies and assistants. — Sections 16-1904, 25-604, 25-605, R.C.M. 1947.

HELD: Salaries of deputies and assistants to county officials may be increased up to 90% of the salary of their principal under the schedule set forth in section 25-605, Revised Codes of Montana, 1947, as amended, notwithstanding the general 10% budget limitation imposed by section 16-1904, R.C.M. 1947, as amended.

October 5, 1970

Mr. Kenneth L. Haag
Dawson County Attorney
Glendive, Montana 59330

Dear Mr. Haag:

You have requested my opinion as to whether deputies and assistants to county officials may receive 90% of the salary of their principals as provided by sections 25-604 and 25-605, Revised Codes of Montana, 1947, as amended in 1969, or whether section 16-1904, R.C.M. 1947, as amended in 1969, limits the salary increase allowed deputies and assistants to 10% annually.

The schedule set forth in section 25-605, *supra*, as amended in 1969, determines the salaries to be paid to elected county officials, depending upon the population and taxable valuation of the county. The 1969 amendment to this section provided for a substantial increase in the salaries of the enumerated county officials. Section 25-604, *supra*, provides that the county commissioners shall set the salaries of deputies and assistants to county officials, and that such salaries shall not exceed 90% of the salary of the officer under whom such deputy or assistant is serving. This section is not mandatory in establishing salaries of deputies and assistants at 90% of their principal, but rather is permissive and establishes a maximum which may be paid.

Section 16-1904, *supra*, as amended in 1969, sets forth the procedure for hearing and adopting county budgets and fixing county tax levies, and provides in part that appropriations for salaries:

“ . . . must not exceed by more than ten per centum (10%) the amount appropriated and authorized for such item under the appropriation contained in the budget approved and adopted for the fiscal year immediately preceding . . . ”

The 10% limitation was added by the 1969 amendment, and is a limitation on total annual salary expenditures by a county and does not limit the salary increase granted to a particular individual.

The legislature is presumed to know of its previous acts. *In Re Wilson's Estate*, 102 Mont. 178, 56 P.2d 733 (1936). Therefore, it must be presumed that the legislature was aware that by changing the salary schedule for county officials in section 25-605, *supra*, it also changed the schedule for deputies and assistants set forth in section 25-604, *supra*, as the schedule for deputies and assistants is based upon the schedule set forth in section 25-605, R.C.M. 1947.

27 *Opinions of the Attorney General*, opinion no. 66, page 145, states that an increase in salaries authorized by the legislature under

section 25-605, R.C.M. 1947, will not be limited by the provisions of section 16-1904, R.C.M. 1947, as the legislature has expressly indicated its intent that the county officials so named should receive increased salaries. When special and general statutes relate to the same subject, the special act prevails. In *Re Wilson's Estate*, 102 Mont. 178, 56 P.2d 733 (1936). The same reasoning applies to salary increases for deputies and assistants, as the increases are based upon the same salary schedule set forth in section 25-605, *supra*. As the increase in the salary schedule authorized by the legislature in amending section 25-605, *supra*, is a special act, it should control over the general 10% budget limitation imposed by section 16-1904, *supra*, as amended.

THEREFORE, IT IS MY OPINION that the salary increases for deputy and assistant county officials authorized by the revised salary schedule contained in section 25-605, Revised Codes of Montana, 1947, as amended by chapter 284, Laws of 1969, are not limited by the general 10% annual salary increase limitation for county budgets as set forth in section 16-1904, Revised Codes of Montana, 1947, as amended by chapter 178, Laws of 1969.

Very truly yours,

ROBERT L. WOODAHL
Attorney General