

48 Op. Att'y Gen. No. 8

COUNTY ATTORNEYS - Longevity increase for years served as deputy;

COUNTY GOVERNMENT - Authority of county commissioners to grant full-time county attorney longevity increase for years served as deputy;

PUBLIC OFFICERS - Longevity increase for county attorney based on years served as deputy;

SALARIES - Longevity increase for county attorney based on years served as deputy;

STATUTORY CONSTRUCTION - Construction of statute's provisions in manner which gives meaning and effect to each;

MONTANA CODE ANNOTATED - Sections 1-2-101, 7-4-2503(3)(d).

HELD: Mont. Code Ann. § 7-4-2503(3)(d)(ii) (1999) authorizes county commissioners to grant full-time county attorneys longevity increases for their years served as deputy county attorneys in addition to their years of service as county attorneys.

November 2, 1999

Mr. Marty Lambert
Gallatin County Attorney
615 South 16th Avenue
Bozeman, MT 59715

Dear Mr. Lambert:

You have requested my opinion on the following issue:

Do the amendments to Mont. Code Ann. § 7-4-2503 authorize county commissioners to grant full-time county attorneys longevity increases for their years served as deputy county attorneys in addition to their years of service as county attorneys?

The relevant statutory provisions are found in subsection (3)(d) of Mont Code Ann. § 7-4-2503, which provides:

(i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of \$1,000 on the anniversary date of employment as a deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of \$1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of service thereafter up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of \$500.

(ii) A county with a full-time county attorney may pay its full-time county attorney the same longevity increase that is provided for under subsection (3)(d)(i) for deputy county attorneys.

(iii) Unless longevity increases are restored pursuant to 7-4-2504(2), the years of service during a year in which the salary was set at the level of the salary of the prior fiscal year may not be included in a calculation of longevity increases.

The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase, but, unless longevity increases are restored pursuant to 7-4-2504(2), the years of service during a year in which the salary was set at the level of the salary of the prior fiscal year may not be included in a calculation of longevity increases.

Specifically, you question how subsection (3)(d)(ii) interacts with subsection (3)(d)(i), and whether subsection (3)(d)(iii) indicates a legislative intent to bar longevity increases to full-time county attorneys who have previously served as deputy county attorneys.

Montana Code Annotated § 1-2-101 expresses a preference that, where possible, a statute be interpreted in a manner which gives meaning to each particular provision of the statute. Accordingly, subsection (ii) should be construed in a manner which gives meaning both to it and to subsection (i). Subsection (i) provides the base method by which to calculate the longevity increases a deputy county attorney earns as each period of longevity is achieved. Subsection (ii) provides that county commissioners may grant a full-time county attorney the "same longevity increase" as that which subsection (i) mandates for deputy county attorneys. Neither of these provisions draws a distinction between years of service as a deputy county attorney and as a county attorney for the purpose of calculating longevity increases, although subsection (i) explicitly states that longevity increases commence upon the completion of four years' service as a deputy county attorney and continue annually thereafter.

In the absence of any contrary language in either subsection, a mutually meaningful construction arises which includes the full-time county attorney's years of service as a deputy county attorney. In instances where a full-time county attorney has no years of service as a deputy county attorney, longevity commences with the full-time county attorney's completion of four years of service as a full-time county attorney. Since legislative intent can be gleaned from the plain wording of these subsections, construed together, I determine it is unnecessary to consult the legislative history of the statute. County v. Dain Bosworth, 265 Mont. 75, 82, 874 P.2d 718, 722 (1994).

The next question is whether the 1999 amendments to subsection (iii) affect my conclusion above. Subsection (iii) is a recodification of Mont. Code Ann. § 7-4-2503(3)(d)(ii) (1997), which read in part:

The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase, but, unless longevity increases are restored pursuant to 7-4-2504(2), the years of service during a year in which the salary was set at the level of the salary of the prior fiscal year may not be included in a calculation of longevity increases.

The 1999 legislature amended this subsection to delete the phrase, "The years of service as a deputy county attorney accumulated prior to July 1, 1985 must be included in the calculation of the longevity increase, but" Consequently, § 7-4-2503(3)(d)(iii) now reads:

Unless longevity increases are restored pursuant to 7-4-2504(2), the years of service during a year in which the salary was set at the level of the salary of the prior fiscal year may not be included in a calculation of longevity increases.

Again, there is no need to consider the legislative history of this amendment, since the meaning of subsection (iii) is clear. See Dain Bosworth, 265 Mont. at 82, 874 P.2d at 722. The amended language does not negate the discretionary authority which Mont. Code Ann. § 7-4-2503(3)(d)(ii) (1999) grants to county commissioners to pay full-time county attorneys the longevity increase that is provided for their prior service as deputy county attorneys. The former language of subsection (ii) and the present language of subsection (iii) merely permit county commissioners to restore longevity increases in those instances where previously withheld cost of living increases are restored pursuant to Mont. Code Ann. § 7-4-2504(2) (1997) and (1999). Conversely, Mont. Code Ann. § 7-4-2503(3)(d)(ii) (1999) constitutes a statute which simply grants county commissioners the discretion to pay full-time county attorneys any longevity increase they earned by virtue of their prior service as deputy county attorneys.

Even though county commissioners may now grant a longevity increase to a full-time county attorney under subsection (ii), the method by which to calculate the longevity increase remains subject to the provisions of subsection (iii). Accordingly, the two subsections actually complement, rather than contradict, one another. My construction of them in such a manner achieves the preference for consistent, meaningful statutory construction expressed in Mont. Code Ann. § 1-2-101. In light of this construction, there is no need for me to consider the legislative history of Mont. Code Ann. § 7-4-2503(3)(d)(iii).

THEREFORE, IT IS MY OPINION:

Mont. Code Ann. § 7-4-2503(d)(ii) (1999) authorizes county commissioners to grant full-time county attorneys a longevity increase for years served as deputy county attorneys in addition to their years of service as county attorneys.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/jet/dm