

48 Op. Att'y Gen. No. 19

COUNTY ATTORNEYS - Longevity salary increase for part-time deputies;
COUNTY GOVERNMENT - Longevity salary increase for part-time deputy county attorneys;
COUNTY OFFICERS AND EMPLOYEES - Longevity increments for part-time deputy county attorneys;
LOCAL GOVERNMENT - Longevity salary increase for part-time deputy county attorneys;
SALARIES - Longevity increase for part-time deputy county attorneys;
STATUTORY CONSTRUCTION - Plain meaning of statutes;
MONTANA CODE ANNOTATED - Sections 2-18-304(2), 7-4-2503(3)(d), -2510;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 77 (1990) (overruled to the extent it relies on 39 Op. Att'y Gen. No. 78), 40 Op. Att'y Gen. No. 61 (1984) (overruled to the extent it relies on 39 Op. Att'y Gen. No. 78), 39 Op. Att'y Gen. No. 78 (1982) (overruled).

HELD:

1. Part-time deputy county attorneys are entitled to longevity pay under Mont. Code Ann. § 7-4-2503(3)(d). 2. The term "years of service" contained in Mont. Code Ann. § 7-4-2503(3)(d) means a calendar year, not 2080 hours of employment.

September 5, 2000

Mr. Ed Amestoy
Phillips County Attorney
P.O. Box 1279
Malta, MT 59535-1279

Dear Mr. Amestoy:

You have requested a letter of advice concerning the following questions:

1. Are part-time deputy county attorneys entitled to longevity pay under Mont. Code Ann. § 7-4-2503(3)(d)?
2. Does the term "years of service" contained in Mont. Code Ann. § 7-4-2503(3)(d) mean a calendar year or 2080 hours of employment?

Since the issues you raise have significance statewide, I have chosen to respond to your letter with a formal opinion.

With respect to your first question, I have concluded that Mont. Code Ann. § 7-4-2503(3)(d) entitles part-time deputy county attorneys to longevity pay. That subsection provides in relevant part:

7-4-2503. Salary schedule for certain county officers. . . .

(3) (d) (i) After completing 4 years of service as a deputy county attorney, each deputy county attorney is entitled to an increase in salary of \$1,000 on the anniversary date of employment as 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.

Mont. Code Ann. § 7-4-2503(3)(d) draws no distinction between part-time and full-time deputy county attorneys. The words of the statute are plain, unambiguous and direct. According to the principles of statutory construction, it is my function to follow the plain meaning of those words. Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 660 (1968). It is not my function in such a circumstance to insert what has been omitted by the legislature or to omit what has been inserted by the legislature. See Mont. Code Ann.

§ 1-2-101. Therefore, since the legislature did not distinguish full-time deputy county attorneys from part-time deputy county attorneys for the purpose of the longevity pay granted by Mont. Code Ann. § 7-4-2503(3)(d), I conclude that the statute does grant longevity pay to part-time deputy county attorneys.

I have further concluded that the term "years of service" employed in Mont. Code Ann. § 7-4-2503(3)(d) refers to a calendar year, rather than 2080 hours of employment. I base this conclusion on the fact that Mont. Code Ann. § 7-4-2503(3)(d) contains language similar to that found in Mont. Code Ann. § 7-4-2510, a statute which provides for longevity pay to deputy sheriffs after the completion of each year of service. Although neither Mont. Code Ann. § 7-4-2503(3)(d) nor Mont. Code Ann. § 7-4-2510 defines the term "years of service," the Montana Supreme Court has held that the term as employed in the latter statute refers to the calendar year, rather than 2080 hours of service. Phillips v. Lake County, 222 Mont. 42, 52, 721 P.2d 326, 332 (1986). In so holding, the Court noted that if the legislature had intended to define the term "years of service" to mean 2080 hours of employment, it would have explicitly done so. Id.; cf. Mont Code Ann. § 2-18-304(2) (defining "years of service" as 2080 hours for state employee longevity allowance). The Court consequently determined that the term "years of service" should be given its ordinary meaning, i.e., the calendar year.

I note that 39 Op. Att'y Gen. No 78 (1982) reached a contrary opinion regarding the definition of the term "years of service" contained in Mont. Code Ann. § 7-4-2510. Phillips operates to overrule that opinion. See Mont. Code Ann. § 2-15-501(7). To the extent that they rely on 39 Op. Att'y Gen. No. 78 (1982), two subsequent opinions--40 Op. Att'y Gen. No. 61 (1984) and 43 Op. Att'y Gen. No. 77 (1990)--should also be considered overruled in light of Phillips.

The logic of Phillips has equal application to Mont. Code Ann. § 7-4-2503(3)(d). The legislature did not define the term "years of service" as 2080 hours of employment for the purpose of that statute. Accordingly, under Phillips the term should be given its ordinary meaning, i.e., the calendar year rather than 2080 hours of employment.

THEREFORE, IT IS MY OPINION:

1. Part-time deputy county attorneys are entitled to longevity pay under Mont. Code Ann. § 7-4-2503(3)(d).
2. The term "years of service" contained in Mont. Code Ann. § 7-4-2503(3)(d) means a calendar year, not 2080 hours of employment.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/jet/dm