

Opinion No. 53-5827

October 22, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Hon. Richard F. Rowley District Attorney Ninth Judicial District Clovis, New Mexico

{*237} In your letter dated October 16, 1953, you refer to Chapter 117, Laws of 1953, appearing as § 15-4103 of the 1941 Compilation, pocket supplement. This law authorizes County Commissioners to determine a salary schedule in first class counties having a valuation of Twenty Million Dollars, or less, in an amount not in excess of schedules in first class counties having a valuation exceeding Twenty Million Dollars, and not less than that of counties of the second class. You state that in Roosevelt County the budget was approved for Sheriff's deputies in the full amount allowed for first class counties, and you request our opinion on two questions, (1) whether or not the County Commissioners are compelled to pay the full amount budgeted and approved by the Tax Commission at the time of the budget approval, and (2) whether or not the language of the last sentence in the section under discussion prohibits any decrease in deputies' salaries during the present term of office.

For your information, I am inclosing a copy of Opinion No. 5775, dated July 1, 1953, which touches upon the same subject matter.

The paragraph, authorizing the County Commissioners to determine salary schedules, reads, in part, as follows:

"The salary schedule for counties of the first class with an assessed valuation of \$ 20,000,000 or less shall be determined by the board of county commissioners and approved by the State Tax Commission at the time county budgets are determined and approved."

Since the county budget for this year has already been determined and approved and the amount so determined and approved for Sheriff's deputies has been fixed, the Board of County Commissioners cannot, in our opinion, reduce the amount so determined and approved at this time and are legally bound to pay such amount from and after July 1, 1953.

With reference to your second question, the last sentence in this paragraph reads as follows:

"The salary schedule in effect on the day the term of office of {*238} any county officer begins shall not be increased or decreased during such term of office."

Since deputy county officers and clerical help do not have any term of office fixed by law and serve only at the pleasure of the appointing officer, we do not feel that this

language applies to any one except elective county officers, and is merely a statement of the constitutional provision found in Article 4, Section 27, of the State Constitution, prohibiting increasing or decreasing an officer's salary during his term of office. If the sentence above quoted is construed to refer to an appointive deputy or clerk in the office, a change in salary could easily be effected merely by resignation or discharge of such deputy or clerical help one day and rehiring the person at a different salary the following day.

Trusting this satisfactorily answers your inquiry,

By: C. C. McCulloh

Assist. Attorney General