

## Opinion No. 37-1649

May 24, 1937

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. John B. Tittmann Assistant District Attorney Raton, New Mexico

{\*101} This is to acknowledge receipt of your letter dated May 20.

The substance of your inquiry, for the purpose of this opinion, may be stated as follows: Does the board of county commissioners of a second class county have the power to reduce the salaries of the deputy assessor, deputy treasurer, deputy county clerk and clerk of the district court below the amount provided for by statute, the full amount of such salaries having been duly budgeted for each of the years involved?

Section 33-3202, New Mexico Statutes Annotated, 1929 Compilation, provides specifically that the annual salaries of the officers mentioned in your inquiry shall be \$ 1500.00 per year. It is to be noted that no authority whatsoever is therein vested in the board of county commissioners on the matter as to whether or not such deputy or deputies should be employed, nor is said board given any discretion whatsoever therein with respect to stating the salary that is to be received by any of said deputies.

It may be stated as a general rule, recognized by the courts generally, that a board of county commissioners can exercise only those powers conferred upon it by organic or statutory laws, or such as may arise by necessary implication from an express power.

In reviewing our statutes and constitution, I am unable to find any statutory or constitutional provisions expressly authorizing the board of county commissioners to so reduce the salaries of deputy county officers, nor am I able to find any statutory or constitutional grant of power from which such an authority might be necessarily implied.

Furthermore, you state in your fact situation that the full amount of such salaries as provided by law was fully and duly budgeted for the years involved. I assume, of course, that the budget for said years was duly approved and certified, and this being so I find a provision {\*102} in Section 33-5904, New Mexico Statutes Annotated, 1929 Compilation, which becomes of some assistance in the conclusion here reached. Said section provides in part as follows:

"\* \* \*, said approved and certified budget shall be binding upon **all** county officials, \* \* \*."

In view, therefore, of the failure of our statutes or constitution to either expressly or impliedly grant such a power to the board of county commissioners, and also in view of the provisions of Section 33-5904, supra, it is my opinion that the board of county commissioners of a second class county has no authority to reduce the salaries of

deputy county officers below the amount provided for by law, and particularly so where the full amount of such salaries, for the years involved, was duly budgeted.

I might add, however, that if the situation is such as would fall under the provisions of the Bateman Act, Sections 33-4241, 33-4242, and 33-4243 of the New Mexico Statutes Annotated, 1929 Compilation, then, of course, these officers, together with the rest of the county officers, would have to bear a pro rata reduction in order to limit the yearly expenditures to the yearly income.

Trusting that the foregoing is responsive to your inquiry, and trusting further that the same may be of some assistance to you, I am

By: FRED J. FEDERICI

Asst. Atty. Gen.