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7 **ATTORNEYS FOR AMICUS CURIAE**
8 **MT SHERIFFS & PEACE OFFICERS ASSOCIATION**

9
10 **IN THE MONTANA FIRST JUDICIAL DISTRICT COURT**
11 **LEWIS AND CLARK COUNTY**

12 * * * * *

13 **DAVID L. CLOUSE, LYNN B. MICHEL, JACK B.)**
14 **SHAMLEY, MICHAEL H. MCFERRIN, VIRGIL A.)**
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PLATTS, URIAH S. WOOD, and GREGORY S.)
TODD,)

NO. ADV-2005-769

BRIEF OF AMICUS CURIAE
MONTANA SHERIFFS AND
PEACE OFFICERS ASSOCIATION

Petitioners,)

v.)

LEWIS AND CLARK COUNTY,)

Respondents.)

The Montana Sheriffs and Peace Officers Association ("MSPOA") respectfully submits
this brief as *amicus curiae* to offer its views on the appropriate construction of statutory

1 requirements regarding longevity pay for deputy sheriffs and undersheriffs.

2 **INTEREST OF THE AMICUS**

3 The (MSPOA) represents the [APPROXIMATELY HOW MANY?] sheriffs and deputy
4 sheriffs from nearly every county in Montana. MSPOA has an interest in the promotion of
5 effective law enforcement and in reasoned and consistent application of the law.
6 Recruitment and retention of qualified professionals to law enforcement work is key to
7 MSPOA’s mission of keeping Montana’s communities safe. MSPOA has followed or been
8 involved in the frequent legislative changes to statutes involving officer compensation and
9 retirement and is interested in seeing such statutes interpreted in furtherance of their intended
10 purpose to recognize the risks faced by law enforcement officers in their daily lives and to
11 promote continuity among the ranks and recognition of commitment to service. Because
12 calculation of longevity pay for deputy sheriffs is an issue faced by nearly every county in the
13 state, interpretation of the statutes in this case may likely impact the compensation of deputy
14 sheriffs and undersheriffs throughout Montana.

15 Although several issues have been raised and briefed extensively by the parties, this
16 brief is intended to address only the narrow issue concerning the salary amount to be used
17 in calculating a deputy sheriff’s or undersheriff’s one percent longevity payment under Mont.
18 Code Ann. § 7-4-2510.

19 **ARGUMENT**

20 **LONGEVITY PAYMENTS MUST BE CALCULATED BASED ON THE ACTUAL BASE SALARY
21 APPLICABLE TO EACH OFFICER’S RANK.**

22 Compensation rates for deputy sheriffs have been controlled by statute for
23 approximately 100 years. “These statutes have been construed without exception as
24 exclusive and mandatory.” 43 Op. Att’y Gen. No. 34 at 106 (1989). Under laws in effect
25 for the past quarter-century, deputy sheriffs and undersheriffs are compensated at a fixed

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1 percentage of the sheriff's salary. Mont. Code Ann. §7-4-2508. Longevity pay, which also
2 has been in place since 1981, likewise is based upon a percentage of salary. Mont. Code
3 Ann. §7-4-2510. Any analysis of salaries and longevity payments accordingly must begin
4 with the statutes governing the sheriff's salary.

5 The county governing body is required by law to set the salaries for county officers,
6 which in most cases is to be based on the recommendations of the county compensation
7 board created by Mont. Code Ann. §7-4-2503(4). The annual salary established for the
8 county treasurer, clerk and recorder, clerk of district court, assessor, school superintendent,
9 sheriff, surveyor, justice of the peace, and auditor "must be uniform" for all of the named
10 offices. Mont. Code Ann. §7-4-2503(1)(b). To the sheriff's annual salary, another \$2,000
11 is added to the uniform amount. Mont. Code Ann. §7-4-2503(2)(b).

12 The salary of the undersheriff is fixed by law at 95% of the sheriff's salary. Mont.
13 Code Ann. §7-4-2508(1). Other deputy sheriffs are compensated at a range between 72%
14 and 90% of the sheriff's salary, depending on the population of the county and the rank
15 structure for each sheriff's office. Mont. Code Ann. §7-4-2508(2). The base salary of each
16 deputy is thus a fixed percentage of the sheriff's base salary. Although the sheriff is entitled
17 to receive additional payment based upon years of service, any such longevity payment is
18 individual to the sheriff and not considered in the calculation of deputy and undersheriff
19 compensation. Mont. Code Ann. §7-4-2503(2)(c). The statute does not exclude from the
20 determination of undersheriff and deputy compensation the \$2,000 statutory salary increase
21 for the sheriff.

22 Accordingly, and by way of example, if the uniform salary of county officers is fixed
23 at \$50,000 under Mont. Code Ann. §7-4-2503(1)(a), then the base salary of the sheriff in
24 that county is \$52,000 and the base salary of the undersheriff is \$49,400 (95% of the
25 sheriff's salary). If, according to the "rank structure" set by the sheriff, a captain's

1 compensation is 90%, then the captain’s base salary is \$46,800. These figures represent
2 the minimum, or base, rate of pay for each rank, because they do not account for additional
3 compensation individual to the deputy, such as longevity pay and overtime hours. Mont.
4 Code Ann. § 7-4-2508(3).

5 Longevity payments are prescribed in Mont. Code Ann. § 7-4-2510. Under that
6 section, each undersheriff and deputy sheriff is entitled to receive an additional one percent
7 “of the minimum base annual salary for each year of service with the office,” to be paid in
8 equal monthly installments.

9 Longevity pay was first introduced in federal statutes regarding the military service and
10 has long been utilized as a means of providing additional compensation to public employees.
11 The underlying purpose and principles of longevity pay (as applied to the U.S. Navy) were
12 explained by the United States Supreme Court over 100 years ago, quoting Chief Justice
13 Drake of the Court of Claims:

14 We think it was intended, first, to induce men to enter the Navy and remain in
15 it for life; second, to remove the depressing influence of long periods of service
16 in one grade without an increase of pay; third, to compensate for increased
17 professional knowledge and efficiency in officers by increasing their pay in
advance of promotion. If these views are correct, the whole basis of longevity
pay is the officer’s capacity for duty, and his performance of it. In other words,
longevity pay is for longevity in actual service.

18 *United States v. Alger*, 151 U.S. 362, 363-64 (1894) (quoting *Thornley v. United States*, 18
19 C. Cl. 111, 117). Longevity pay is now part of the compensation system for all state
20 employees in Montana, as well as that of firefighters and law enforcement officers. Mont.
21 Code Ann. §§ 2-18-304, 7-32-4116, 7-33-4128, 7-4-2510. Although each statute contains
22 slightly different wording, all are designed to make clear that the salary upon which longevity
23 payments is calculated is the “base salary,” so that previous longevity increments, overtime
24 or other fringe benefits are not included. See *also*, Mont. Code Ann. § 2-18-101(3). This is
25 consistent with the historical view that longevity pay was not to be computed “by

1 compounding previous pay for that purpose[.]” *United States v. Miller*, 208 U.S. 32, 38
2 (1908).

3 The question in this case is what the “base salary” is for computation of longevity for
4 undersheriffs and deputy sheriffs. The first issue is whether the base salary, which is a
5 percentage of the sheriff’s salary, includes the extra \$2,000 paid to the sheriff under Mont.
6 Code Ann. §7-4-2503(1)(b). The second issue is whether each deputy sheriff’s longevity pay
7 is to be determined by reference to the base salary for the deputy’s rank or to the lowest
8 percentage allowed by law for any deputy.

9 **A. Since Deputy Compensation is Based on a Percentage of the Sheriff’s Actual**
10 **Salary, There is No Reason to Exclude a Portion of That Salary in Computing**
Longevity Payments.

11 The Final Agency Decision concluded that “salary of the sheriff” cannot mean one
12 thing for determining salary of the deputies and another for determining their longevity pay.
13 (Final Agency Decision at 53.) The hearing officer correctly noted that the sheriff’s “salary”
14 includes \$2,000 above and beyond the uniform salary for other county officers. Since the
15 deputies’ salary is tied directly to the sheriff’s salary, and since longevity is a percentage of
16 salary, it is illogical to divorce the \$2,000 portion of the salary solely for purposes of
17 longevity calculation. The Court must read the salary statutes in their entirety and give
18 effect to all provisions, if possible. *S.L.H. v. State Compensation Mutual Ins. Fund*, 2000 MT
19 362, ¶31, 303 Mont. 364, ¶31, 15 P.3d 948, ¶31; *Case v. Mahoney*, 2000 MT 324, ¶12,
20 303 Mont. 8, ¶12, 15 P.3d 884, ¶12; Mont. Code Ann. § 1-2-101. The deputies’ base
21 annual salary is calculated by reference to the actual base salary of the sheriff; only the
22 sheriff’s longevity payments are excluded in making those calculations. Mont. Code Ann. §
23 7-4-2503(2)(c). There is no statutory basis for a separate mathematical process to subtract
24 \$2,000 from each officer’s salary before computing longevity pay. The Final Agency
25 Decision correctly interprets the law on this point and should be affirmed.

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1 **B. The Statute Does Not Support a Uniform Longevity Allowance**
2 **Unrelated to the Rank Structure in the Office.**

3 By law, the sheriff is required to assign salary levels within the statutorily prescribed
4 range “according to a rank structure in the office.” Mont. Code Ann. §7-4-2508(2)(b). For
5 that rank, the assigned percentage then becomes the base salary. The question before the
6 Court is whether the base salary for each rank is to be used to compute the longevity pay for
7 an officer who holds that rank. According to MSPOA data, over half of Montana’s counties
8 currently use the rank structure in determining longevity pay. [CONFIRM THIS – SEE
9 DEPUTIES’ EX. 2]

10 The hearings officer relied on a 1981 and a 1989 Attorney General’s Opinion to
11 conclude that longevity pay for all deputy sheriffs is to be calculated by reference to the
12 smallest available percentage under Section 7-4-2508. (Final Agency Decision at 53.)
13 Neither of the Opinions cited expressly addressed the issue presented here. The 1981
14 opinion concluded that the Legislature “intended to standardize the base figure for longevity
15 payment calculations by statutorily setting that figure at the minimum permissible level for
16 each county[.]” 39 Op. Att’y Gen. No. 21 at 85 (1981). The opinion did not discuss the
17 interplay between Section 7-4-2510’s “minimum base annual salary” and Section 7-4-2508’s
18 requirement that compensation be determined “according to a rank structure in the office.”
19 The 1989 opinion merely restated that the “minimum base annual salary” for purpose of
20 determining a deputy sheriff’s or undersheriff’s longevity is “based on the sheriff’s base
21 salary.” 43 Op. Att’y Gen. No. 44 at ___ (1989).

22 The hearing officer observed that original language in the bill fixed a deputy sheriff’s
23 longevity payment at 1% of “his annual salary” and that by replacing that language with “the
24 minimum base annual salary,” the legislature intended to tie longevity to the lowest
25 percentage of compensation available for any deputy sheriff. However, this construction of

1 the statute does not harmonize with the salary statutes and does not lead to a common sense
2 application of the longevity statute that furthers its purpose. As originally drafted, the bill's
3 reference to "his annual salary" would be open to a construction that longevity should be
4 based on the total amount of compensation received by the deputy, including overtime and
5 longevity. The legislature clearly did not want longevity to be compounded by previous
6 longevity increments or increased by the amount of overtime worked by a particular deputy.
7 Rather, longevity was to be standardized according to base salary. By law, that salary must
8 be set according to the officer's rank. Had the legislature wanted to tie longevity to the
9 salary of an entry-level probationary patrol officer, it could easily have done so by fixing the
10 one percent to a specific percentage prescribed by law. (*Compare*, Mont. Code Ann. §7-32-
11 4116(3).) Instead, it fixed longevity to the base salary, which requires reference back to the
12 statutes setting the compensation of the sheriff and his or her deputies.

13 Under the Agency's construction of the statute, only the undersheriff would receive
14 a longevity payment tied to the base salary of the office, because it is statutorily prescribed
15 at 95% of the sheriff's salary. All other deputies, from probationary patrol officer to captain,
16 would receive identical amounts of longevity pay based on the lowest rank of pay available
17 to the office. The statutes do not support this construction and it is at odds with the primary
18 purposes underlying longevity pay. If longevity pay is designed to provide incentive for
19 officers to enter the law enforcement profession and to stay in it for their entire careers, and
20 if it is intended to recognize increased professionalism and efficiency that comes with years
21 of service, it only makes sense to reward the officers' capacity for and performance of duty
22 by calculating the longevity payment with reference to the officer's base salary. Otherwise,
23 the officer is forever destined to the longevity payment of an entry level patrol officer and not
24 appropriately compensated for the hard work and commitment that accompanies the added
25 responsibility of higher ranking offices.

1 Viewing the statutes in their entirety and consistent with the purpose for which
2 longevity pay was intended, the phrase “minimum base salary” should be construed to mean
3 the base compensation fixed according to the rank structure in the sheriff’s office, and
4 excluding overtime, longevity pay increments awarded to either the deputy or to the sheriff,
5 and other fringe benefits. This construction gives effect to all provisions of the statutes
6 governing compensation for undersheriffs and deputies, rather than restricting the scope of
7 review to “narrow clauses” in the statutory scheme. *Dukes v. City of Missoula*, 2005 MT 196,
8 ¶ 14, 328 Mont. 155, ¶ 14, 119 P.3d 61, ¶ 14 (2005). It construes the longevity statute
9 “reasonably and in a way that is best able to effectuate its purpose, rather than in a way which
10 would weaken that purpose.” *Battis v. Montana Dep’t of Revenue*, 2004 MT 17, ¶ 22, 319 Mont.
11 292, ¶ 22, 83 P.3d 1278, ¶ 22.

12 After a *de novo* review of the statutes, the Court should reverse the Final Agency
13 Decision on this point and hold that the longevity payment for undersheriffs and deputy
14 sheriffs must be calculated by applying the statutory one percent to the base salary set
15 according to the rank structure in the office.

16 SHOULD WE ADDRESS THIS?: The Deputies argue the Court should, at a minimum, preserve
17 the issue for collective bargaining. However, the Attorney General has opined that the
18 method for calculating longevity pay increases for deputy sheriffs and undersheriffs is
19 mandatory and may not be altered through collective bargaining. 43 Op. Att’y Gen. No. 34
20 at 103 (1989).

21 CONCLUSION

22 The Court should affirm the Agency’s conclusion that the sheriff’s base salary,
23 including the \$2,000 statutory increase, should be used for determining the “minimum base
24 annual salary” on which longevity payments are calculated for deputy sheriffs and
25 undersheriffs in accordance with Mont. Code Ann. §7-4-2510. The Court should reverse the

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1 Agency's conclusion that "minimum base annual salary" means the lowest available
2 percentage that may be paid any deputy, and hold instead that the phrase means the base
3 salary assigned according to the rank structure in the office, consistent with the
4 determination of compensation under Mont. Code Ann. §7-4-2508.

5 Dated April __, 2006.

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12 **ATTORNEYS FOR AMICUS CURIAE**

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14 **CERTIFICATE OF SERVICE BY MAIL**

15 **I HEREBY CERTIFY** that a copy of the foregoing **BRIEF OF AMICUS CURIAE MONTANA**
16 **SHERIFFS AND PEACE OFFICERS ASSOCIATION** was served upon the following by mailing a true and
17 correct copy thereof on **April 18, 2006**, addressed as follows:

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