

County Athletic Commission—Payment of Salary From What Fund.

Chapter 190 of the Laws of 1919 construed not to make any provision for the payment of salary of the Secretary of a County Athletic Association.

C. C. Rowan, Esq.,
County Attorney Carbon County,
Red Lodge, Montana.

My dear Mr. Rowan:

You have requested my opinion on the following question:

"Should the twenty-five dollars per month allowed as salary of secretary of County Athletic Commission under Chapter 190 of the Session Laws of the Sixteenth Legislative Assembly (1919) be paid out of the fund which is turned over to the State Treasurer, to be placed in a fund for support and maintenance of a home for disabled soldiers and sailors, or should the same be deducted from the gross proceeds of contests staged under the supervision of such Commission, and before the fifty per cent of the net proceeds is turned over to the County Treasurer to be by him forwarded to the State Treasurer as aforementioned?"

The law above referred to was passed by the Sixteen Legislative Assembly, referred to the people of Montana for ratification at the general election of November 2, 1920, became a law on proclamation of the Governor of date December 6, 1920, and in its final form is found on page 695 of the 1921 Session Laws.

Section 1 thereof provides for the appointment of a County Athletic Commission, and Section 2 reads as follows:

"The Commission may maintain an office for the transaction of its business at a place to be by it designated. The Commission shall within thirty days after its members have been appointed, meet and elect one of its members Chairman of the Commission, and also elect a Secretary of the Commission, who shall act during the pleasure of the Commission, and who may receive a salary of not to exceed Three Hundred Dollars (\$300) per annum, to be paid in monthly installments of not to exceed Twenty-five Dollars (\$25) per month, from a fund to be created as hereinafter provided for."

The question under this section is whether the word "may" is to be construed as used in a mandatory sense. In the case of Montana Ore Purchasing Co. v. Lindsay, 25 Mont. 24, 63 Pac. 715, the court made use of the following language:

"According to its natural and usual signification, the word 'may' is enabling and permissive only, and so it must be interpreted where no right of or benefit to the public, nor right

of persons other than the one upon whom the permission is conferred, depends upon giving to it the obligatory meaning; but the word is interpreted to mean 'shall' or 'must' whenever the rights of the public or of third persons depend upon the exercise of the power or performance of the duty to which it refers. In those cases where the public or persons possess the right to require that the power conferred by the word 'may' be exercised, the word is imperative and mandatory, being the equivalent of 'shall' or 'must.' (Citing cases.)

This language was repeated and approved in *State ex rel. Stiefel v. District Court*, 37 Mont. 298, on page 304.

In the instant matter, the secretary of the Commission is the only person to benefit under the permission conferred by the word, and therefore, under the above rule, it must be interpreted as enabling and permissive only. In other words, the Secretary may be allowed a salary but the law does not make payment of one obligatory upon the Commission.

This salary, if allowed, is to be paid "from a fund to be created as hereinafter provided for." This indicates that the framers of the Act intended to create a fund for the payment of such salaries to secretaries as were allowed by the various Commissions. However, the only fund created in the Act is that created by the latter part of Section 9, which is "fifty per cent of its total net receipts from the sale of the tickets of admission to such boxing, sparring or wrestling match or exhibition, which sum shall be by the County Treasurer remitted to the State Treasurer to be by him applied to a fund to be created for the support and maintenance of a home for returned and disabled soldiers and sailors of the world war."

There is no provision for any payment of salaries or expense to be made from this fund. It is created for one purpose and one purpose only, and can be applied to no other purpose prior to January 1, 1929, when, in case the contemplated home is not established, it shall be transferred to the School Fund of the State of Montana. This fund is in the nature of a trust fund, and it is plainly evident that the Legislature did not intend salaries to be paid from this fund. The law appears to be in the peculiar situation of authorizing a salary, but making no provision for paying it, as the "fund to be created," mentioned in Section 2 thereof, was never in fact created.

It is, therefore, my opinion that the salary authorized to be paid to the secretary of a County Athletic Association is permissible but not mandatory; that it is not payable from the fund in the hands of the State Treasurer created for the support and maintenance of a home for returned and disabled soldiers and sailors of the World War; that the Act does not authorize the deduction of the amount

from the gross proceeds of contests staged under the supervision of the Commission; and that no provision is made in the Act for the payment of such salaries.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.