

County Clerk and Recorder—Increase of Salary During Tenure of Office.

The salary of a County Clerk and Recorder may not be increased during the tenure of the incumbent.

Board of County Commissioners,
Judith Basin County,
Stanford, Montana.

Gentlemen:

I have your letter in which you inquire whether a County Clerk and Recorder holding office on January 3, 1921, is entitled to an increase of \$500 per annum under House Bill No. 76, Chapter 151 of the Laws of the 17th Legislative Assembly.

Section 31 of Article V of the Constitution of the State of Montana provides:

"Except as otherwise provided in this constitution, no law shall extend the term of any public officer, or increase or diminish his salary or emolument after his election or appointment; provided, that this shall not be construed to forbid the legislative assembly from fixing the salaries or emoluments of those officers first elected or appointed under this constitution, where such salaries or emoluments are not fixed by this constitution."

Section 5 of Article XVI of the Constitution is as follows:

"There shall be elected in each county the following officers: One county clerk, who shall be clerk of the board of county commissioners and ex-officio recorder; * * *"

The office of the Attorney General has heretofore had occasion to pass upon the question here involved, the opinions relating thereto being found in Volume 4 of the Opinions of Attorney General, at page 45, and Volume 8 of the Opinions of the Attorney General, at pages 340 and 374.

The above mentioned opinions are of one accord, that if the office is created or provided for in the Constitution, the salary or emoluments of the officer cannot be increased or diminished during his term of office.

Section 5 of Article XVI, *supra*, clearly defines the office of Clerk and Recorder as a constitutional one.

It is, therefore, my opinion that a Clerk and Recorder, who was in office when House Bill No. 76 was approved, is not entitled to the increase in salary provided in said Act.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.