Opinion No. 387

Public Officers — Compensation — Coroners—Salary—Fees

HELD: Chapter 59, Laws of 1933, is intended to apply to officers elected or appointed prior to enactment, insofar as it does not violate the Constitution, Article V, Section 31.

Changing the compensation of a public officer from fee basis to salary basis is not necessarily increasing or decreasing his compensation. Unless such effect is apparent it will be presumed that the Legislature and Governor, before the passage of the Act, found to the contrary.

November 14, 1933.

You have submitted an opinion from the County Attorney of Silver Bow County to the effect that Chapter 59, Laws of 1933, fixing the salary of coroners at Thirty-three Hundred Dollars per annum, in lieu of fees, in counties having a population of Fifty Thousand or more, applies to the present Coroner of Silver Bow County who was elected and took office prior to the said enactment.

This chapter expressly amends Section 4922, R. C. M. 1921, repeals all conflicting acts, (Section 2), and declares that it "shall be in force and effect from and after the 31st day of March, 1933", (Section 3). The act changes the milage from ten cents to seven cents per mile and permits only one fee of Five Dollars when two or more inquests are held on the same day.

Since, without Section 3, the act would be effective on the first day of July, it is evident that the Legislature intended that the act should apply to present officers insofar as it does not violate the Constitution, Article V, Section 31, which forbids increasing or decreasing the salaries of any public officers after their election or appointment.

It has been held, however, that when the compensation of an officer is changed from a fee basis to a salary basis and it is not apparent that any increase in compensation will result, the necessary presumption in favor of the Legislature will be indulged in, that no increase will result. (46 C. J. p. 1026, Section 265; Keith v. Ramsey, 34 Cal. A. 167 Pac. 408; Galeener v. Honeycutt, Cal., 159 Pac. 595; Crocket v. Mathews, Cal., 106 Pac. 575; Smith v. Mathews, Cal., 103 Pac. 199; Elder v. Garey, Cal., 127 Pac. 826.)

While the California Constitution forbids an increase, yet, if the principle announced by the California Court is correct, the converse must necessarily also be true, to-wit: that such a change of basis of compensation will not result in a decrease in compensation. It was said in Smith v. Mathews: "Upon this assumption we affirmed the judgment of the superior court, holding, in accordance with the doctrine of Stevenson v. Colgan, 91 Cal. 649, 27 Pac. 1089, 14 L. R. A. 459, 25 Am. St. Rep. 230, that the constitutionality of an act of the Legislature is always a pure question of law, and that when the right to enact a law depends upon the existence of a fact the passage of the act implies, and the conclusive presumption is, that the Governor and the Legislature have performed their duty, and ascertained the existence of the fact before enacting or approving the law—a decision which the courts have no right to question or review."

For the foregoing reasons we concur in the conclusion reached by the County Attorney.