

Opinion No. 472.**Salary—Warrants—Commissioner of
Agriculture—State Officers,
Appointive.**

HELD: Under Section 1, Article XVIII of the Constitution and Sections 3555, 3556, and 3557, R. C. M., 1921, Stafford has the right to hold office as Commissioner of Agriculture until February 2, 1934 and, having discharged the duties of his office to that date, he is entitled to his salary for the month of January, 1934.

February 24, 1934.

Your letter to us of recent date is as follows: "Herewith attached copy of letter this date received from A. H. Stafford as Commissioner of Agriculture for the State of Montana. It is apparent from this letter Mr. Stafford is making a written demand upon me, as Auditor, to execute and deliver to him a warrant covering his January, 1934, salary. I have verbally requested an opinion as to whether or not, as State Auditor, I may legally cause this warrant to be executed and delivered."

It appears that on April 5, 1929, J. E. Erickson, then Governor of Montana, made an order, effective June 1, 1929, appointing A. H. Stafford Commissioner of Agriculture until April 1, 1933.

On or about June 1, 1929, he qualified as such commissioner. At the legislative session of 1931 the Senate confirmed the appointment so made. Stafford performed the duties of the office without interruption, interference or question from June 1, 1929, or thereabouts, to February 2, 1934, when A. P. Bruce laid claim to the same by virtue of his appointment thereto by F. H. Cooney, Governor of Montana, on the previous day. Other facts which may materially affect the right of one or other of them to the office on and after February 2, 1934, exist, but we think they have no particular bearing on the situation before us and so refrain from setting them forth.

Section 1, Article XVIII, of the Constitution, reads as follows:

"The legislative assembly may provide for a bureau of agriculture, labor and industry, to be located at the capital and be under the control of a commissioner appointed by the governor subject to the confirmation of the senate. The commissioner shall hold his office for four years, and until his successor is appointed and qualified: his compensation shall be as provided by law."

Sections 3555, 3556 and 3557, Revised Codes 1921, provide:

"3555. There is hereby created a department of the government of the state of Montana to be known as the 'Department of Agriculture, Labor, and Industry.' * * *

"3556. The chief executive officer of the department of agriculture, labor, and industry, hereinafter referred to as the commissioner of agriculture, shall be a commissioner of agriculture, to be appointed by the governor, by and with the consent of the senate, and such commissioner shall hold office for a term of four years or until his successor is appointed and qualified.

"3557. Before entering upon the duties of his office, the commissioner of agriculture shall take and subscribe the constitutional oath of office, and shall give a surety company bond in the sum of five thousand dollars, conditioned for the faithful performance of his duties, the cost of said bond to be paid by the state. The commissioner shall receive an annual salary of five thousand dollars, pay-

able in the same manner as the salaries of other state officers, * * *."

Under the constitutional provision and the statute in pursuance thereof, cited above, Stafford had the right, apart altogether from other considerations, if any, to hold the office of Commissioner of Agriculture until February 2, 1934, (Whether he had the right to hold it thereafter on any valid ground or grounds is now before the district court and is a matter exclusively for its determination.) and having discharged the duties of the office to that date he is entitled to receive the emoluments thereof for the month of January, 1934, (State ex rel. Sandquist v. Rogers, 93 Mont. 355; 46 C. J. 1016) unless some extraneous circumstances stand in the way.

Therefore, it is our opinion that you may lawfully draw and deliver to Mr. Stafford a warrant in payment of his salary for the Month of January.