

Governor of Montana to act in conjunction with a commission from the State of Wyoming on a study of the rights of the States of Wyoming and Montana to the waters in the tributaries of the Yellowstone River, and in the study of an interstate compact between said states as to said waters, and your right to receive a per diem and the payment of expenses from funds of the State Engineer while thus engaged.

The Constitution provides, Article V, Sec. 7, that: "No Senator or Representative shall during the term for which he shall have been elected be appointed to any civil office under the state."

In the case of *State ex rel Nagle v. Kelsey*, 102 Montana, 8, the Supreme Court held that a State Senator could not be a member of the State Relief Commission.

In the case of *State ex rel Barney v. Hawkins*, 79 Montana, 506, 529, the court said, "After an exhaustive examination of the authorities, we hold that five elements are indispensable in any position of public employment in order to make it a public office of a civil nature \* \* \* (5) it must have some permanency and continuity and not be only temporary or occasional."

This quotation was approved in *State ex rel Nagle v. Page*, 98 Montana, 14, 17, and *State ex rel Nagle v. Kelsey*, 102 Montana, 8, 16. Service upon this temporary commission which you mentioned is entirely different from the service upon the permanent commission discussed in the *Kelsey* case.

It is my opinion that because it is a temporary employment, it is within provision of the Constitution and that neither this constitutional provision or statute would prevent you from serving upon that commission and still retaining your position as State Senator; and that you may receive compensation and expenses therefor from the fund which you mentioned.

#### Opinion No. 13

#### Offices and Officers—State Senator— Boards and Commissions, Ap- pointments to.

HELD: A state senator may serve as a member of a joint commission of two states to study the rights to waters in the tributaries of the Yellowstone River, and in the study of an interstate compact between the states as to said waters, and may receive per diem and expenses while so serving, such membership being only temporary.

January 12, 1939.

Hon. B. B. Armstrong  
State Senator  
State Capitol  
Helena, Montana

Dear Mr. Armstrong:

You inquire as to your right to serve upon a commission appointed by the