

No. 100

**OFFICES AND OFFICERS—COMPENSATION—COUNTY
ATTORNEY, Salary of—SALARY, How Computed at End of
Term of County Officers**

Held: Newly elected county officers whose terms of office begin on the first Monday in January are entitled only to salaries for said month at the annual rate for the actual number of days served in such month.
The retiring county officer is entitled to salary for the number of days served in the month of January in which his term ends, at the annual rate.

April 25, 1941.

Mr. M. G. Candee
County Attorney
Lincoln County
Libby, Montana

Dear Mr. Candee:

You have submitted to this office for opinion the question as to whether the incoming county attorney, who assumed office January 6, 1941, is entitled to full salary for the month of January.

Section 19 of Article VIII of the State Constitution provides that the term of office of the county attorney "shall be two years, except that the county attorneys first elected shall hold their offices until the general election in the year one thousand eight hundred and ninety-two (1892), and until their successors are elected and qualified."

Section 4867, Revised Codes of Montana, 1935, provides county officers are entitled to receive "an annual compensation or salary for services according to the following classifications . . ." And Section 4868 provides that "the salaries of the several county officers . . . must be paid monthly . . ."

The county attorney is elected at the general election in November and takes office on the first Monday in January next succeeding the election (Section 4728). The incumbent county attorney would therefore hold his office until the first Monday in January.

While it is true the term of office is two years, and the compensation is an annual salary, yet I do not believe a strict construction of these provisions was intended. The first Monday in January is not always the first day of January, and in fact infrequently is this the case. Hence, the term in actual number of days could very seldom, if ever, be two full calendar years. It is sometimes less and sometimes more.

While this question has not been before our courts, the Supreme Court of California, under statutes similar to ours concerning terms of office and salaries of county officers, considered the question in the case of *Dillon v. Bicknell*, 47 Pac. 937. In that case the court—in deciding adversely to the contention that the incoming county attorney was entitled to full salary for January—said:

"Indeed under the statute fixing the commencement and termination of the terms of county officers it can never happen that the term consists of precisely two years, it being sometimes more and sometimes less; and therefore the provision fixing the compensation at an annual sum should be construed as fixing the rate of compensation for the time the officer actually serves. This construction will do exact justice between the preceding and succeeding officers, and not increase the burden to be borne by the people."

It is therefore my opinion that elected officers whose terms of office are fixed by statute and whose compensation is fixed on an annual basis are entitled to receive compensation at the annual rate for the actual number of days served in the month in which their terms end and their successors' begin.

In the instant case, the retiring county attorney would be entitled to five days' compensation for the month of January at the annual rate and his successor would be entitled to five days' less for said month.

Sincerely yours,

JOHN W. BONNER
Attorney General