

Opinion No. 44**Counties—County Commissioners—Increase of Salary or Emolument
of Public Officer—Constitution—Enactment and Effective Dates
of Statutes**

Held: 1. For the purpose of the application of Section 31, Article V of the Montana Constitution a legislative enactment is a "law" within the meaning of said section upon the date of its enactment as opposed to its effective date.

2. A county commissioner appointed prior to the effective date of Chapter 238, Laws of 1957, but subsequent to its enactment date, is not prohibited by Section 31, Article V, Montana Constitution, from receiving the increased compensation granted by the Act.

January 15, 1958

Mr. Douglas Drysdale
County Attorney
Bozeman, Montana

Dear Mr. Drysdale:

The enactment of Chapter 238, Laws of 1957, altered and increased the compensation of county commissioners of the first four classes of counties. The date of enactment was March 13, 1957, to be effective on July 1, 1957. Section 43-507, RCM, 1947. After the enactment of Chapter 238, *supra*, and before its effective date, an appointment was made to the Board of County Commissioners of Gallatin County.

The question which you have submitted, based upon these facts, is whether Chapter 238, Laws of 1957, was a "law" within the meaning of Section 31, Article V, Mont. Const., on March 13, 1957, its enactment date, so that a county commissioner appointed after this date, but prior to the effective date could receive the increased compensation provided by the act?

Section 31, Article V, Montana Constitution, provides in part:

“. . . no law shall extend the term of any public officer, or increase or diminish his salary or emolument after his election or appointment . . .”

It should be noted that the prohibition in question is a restriction imposed upon the legislative department of government, the purpose of which was expressed in *State ex rel. Jackson v. Porter*, 57 Mont. 343, 347, 188 Pac. 375 being:

“. . . to secure, as far as possible, the independence of each co-ordinate branch of government, and to that end relieve the law-making branch from the importunities of office-holders who might seek increased compensation, not for the office, but for themselves, and what was of infinitely greater consequence, remove from the lawmakers the temptation to control the other branches of government by promises of reward in the form of increased compensation or threats of punishment by way of reduced salaries; or, stated differently, the sole purpose of the constitutional limitations is to remove from the sphere of temptation every public officer whose office is created by the Constitution and whose official conduct in the remotest degree might be influenced by the hope of reward or the fear of punishment.”

Neither of the two reasons quoted above applies to an officer who takes office, either by appointment or election, after the legislature has acted. This being true regardless to what date the operation of the enactment is postponed. From this it is most persuasive to conclude, that, in a case such as this where the legislature has acted to increase the salary of certain officers at some future date, it is the date of enactment we must look to for the purpose of determining whether there has been an act in contravention of Section 31, Article V, *supra*.

Substantially the same question was presented to the Montana court in the case of *Broadwater v. Kendig*, 80 Mont. 515, 522, 261 Pac. 264. In that case the mayor of Havre was elected April 1, 1926, and took office May 1, 1926. On April 22, 1926, after the mayor had been elected but before he began serving his term, the city council enacted an ordinance which increased the mayor's salary. Section 5060, RCM, 1921 (Section 11-1106, RCM, 1947) provided that no ordinance shall become effective until thirty days after its passage, so that the law raising the salary of the mayor, although enacted prior to the date the mayor took office was effective after he began serving.

It is true that the court expressly stated that an ordinance was not a "law" within the meaning of Section 31, Article V, Mont. Const., and as a result was not interpreting the application of this constitutional prohibition. However, the substance of the prohibitory statute in question in the *Kendig* case is identical to the substance of Section

31, Article V, *supra*, and the reasoning of the Court in the Kendig case is clearly applicable to the instant case.

The statute applicable in the Kendig Case was Section 5026, RCM, 1921 (Section 11-732, RCM, 1947) which provides as follows:

"The salary and compensation of an officer must not be increased or diminished during his term of office."

In making its determination as to whether the time of enactment or the effective date of the ordinance was controlling the court, at Page 522 of 80 Mont. said:

"In our opinion it is the time of the enactment of the ordinance providing for the change of salary rather than the effective date which is controlling. A statute to take effect in future is a law of *praesenti*. An Act has a potential existence upon its passage despite the fact that its effective day is postponed. 'That a statute or constitutional provision may have a potential existence, but which will not go into actual operation until a future time, is familiar law.' (State v. Dirckx, 211 Mo. 568, 111 S.W. 1, citing State v. Wilcox, 45 Mo. 464; State v. Pond, 93 Mo. 625, 6 S.W. 469; Ex parte Snyder, 64 Mo. 61; see, also, State ex rel. Otto v. Kansas City, 310 Mo. 542, 276 S.W. 389)."

The only distinction between the Kendig case and the instant case is that there we had the enactment of an ordinance falling under statutory prohibition and here we have the enactment of a statute under a constitutional prohibition. Only the form is different, the substance is the same. See Section 49-120, RCM, 1947. From the application of this reasoning to the question submitted. I must conclude that, for the purpose of the application of the prohibition of Section 31, Article V of the Mont. Const., a legislative enactment becomes a "law" upon the date of its enactment as opposed to its effective date.

In support of this conclusion, and directly in point is the case of *Young v. Board of County Commissioners of Park County*, 102 Colo. 342, 79 Pac. (2d) 654. *Young* had been elected after the enactment date but two months before the effective date of a statute which reduced the compensation of the office to which he was elected. He contended that although the law had been enacted prior to his election it was not to become effective until after his election and so not law for any purpose until the effective date. Upon his theory, *Young* argued that the law contravened Section 30, Article V of the Colorado Constitution.

Section 30, Article V of the Colorado Constitution provided, in part as follows:

"No law shall extend the term of any public officer, or increase or decrease his salary after his election or appointment,
..."

Concluding that, for the purpose of the application of this constitutional prohibition, it was the enactment date as opposed to the effective date of the act that was controlling, the court said:

"Said section 30 forbids the increase or diminution of the salary or emolument of a public officer, 'after his election or appointment'. But the question here is not what was the remuneration of the public trustee of Park county from November 6, 1934, when plaintiff was elected, to January 15, 1935, when the act took effect. The question is, When plaintiff was elected November 6, 1934, what was then the compensation fixed by law for the term for which he was elected? That compensation had been definitely fixed by said Chapter 152, already passed and approved, and effective on the date named therein, i. e., January 15. The compensation had been changed as of that date when plaintiff was elected. We do not overlook the general rule that statutes speak from their effective date, and that, generally speaking, they are held inoperative for any purpose prior thereto. 59 C.J. Sec. 673, P. 1137. But it seems to require no argument to demonstrate that such statements are not entirely accurate. In the instant case the law was passed and approved. It carried no provision which could properly be construed as a declaration that it was not to be considered law for any purpose before January 15, 1935. The mere statement, 'This Act shall be effective on and after January 15, 1935,' Laws 1933, p. 792, Sec. 4, applied to the instant case, means nothing more than that the change in compensation takes effect on that date. In other words, on November 6, 1934, when plaintiff was elected, it was the law of Colorado that on and after January 15, 1935, the public trustee of his county should receive no compensation beyond what he drew as county treasurer."

This opinion does no damage to the holding in *Adami v. Lewis & Clark County*, 114 Mont. 557, 559, 138 Pac. (2d) 969, to the effect that a public officer elected or appointed prior to the effective date of statute increasing the salary of that officer was not entitled to the provided increase. The statute in question in the *Adami Case* was to become effective upon its enactment so that the effective date and the enactment date were identical. Further, there is every indication that the court in the *Adami Case* was using the phrase "effective date" and "enactment date" interchangeably, when, on Page 559 of 114 Mont. the court said:

"The learned district judge before whom the cases were tried held valid the provision of Chapter 87 relating to deputies and assistants; and held that Chapter 169 was unconstitutional as to county officers' terms which resulted from election or appointment prior to the passage and approval of the Act, but constitutional as to such terms resulting from election or appointment thereafter. The appeals are from the judgments.

"There can be no possible doubt that the decision with reference to Chapter 169 is correct, and that the legislative intent to

make it effective as to the terms of persons elected or appointed prior to its effective date is unconstitutional as in excess of the legislative power."

Neither the facts upon which the case arose, nor the language of the court, indicate that the Adami Case stands for the rule that the effective date rather than the enactment date of a statute is controlling in the application of Sec. 31, Art. V, Mont. Const.

In conclusion, it is necessary that I point out that the effect of this opinion, in declaring the significance of the enactment date of the statute as opposed to its effective date, is strictly limited to those questions involving the application of Sec. 31, Art. V, Mont. Const. It is for this purpose and this purpose alone that a statute is a "law" on its enactment date, although its effective date is postponed to a future date.

Very truly yours,
FORREST H. ANDERSON
Attorney General