Opinion No. 15

OFFICES AND OFFICERS; County; Salaries, change of—ARTICLE V. Section 31, Montana Constitution—Section 25-605, Revised Codes of Montana, 1947—Chapter 195, Laws of 1961.

Held: County officers who were elected and took office prior to the enactment of Chapter 195, Laws of 1961, should not, during their present term of office, be paid according to the salary schedule contained in that act.

June 13, 1961

Mr. Albert E. Leuthold
State Examiner
Capitol Building
Helena, Montana

Dear Mr. Leuthold:

You have requested my opinion on the following question:

Should county officers, who were elected and took office prior to the enactment of Chapter 195, Laws of 1961, be paid according to the salary schedule contained in that act?

Chapter 195, Laws of 1961, is, for the most part, an upward revision of the salary schedule contained in Section 25-605, Revised Codes of Montana, 1947, and thus provides an increase in salary for the elected officers of most counties. For officers of counties having a taxable valuation in excess of 65 million dollars, Chapter 195 provides a slight decrease in salary.

Article V, Section 31, of the Montana Constitution provides in pertinent part that:

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

In view of this provision of our constitution, it is clear that the Legislature did not intend Chapter 195 to apply to county officers presently in office. It is equally clear that, even had the legislature intended that Chapter 195 apply to county officers holding office at the time, it would be beyond their power to do so. Adami v. County of Lewis and Clark, 114 Mont. 557, 138 Pac. 2d. 969 (1943).

It is therefore my opinion that county officers who were elected and took office prior to the enactment of Chapter 195, Laws of 1961, should not, during their present term of office, be paid according to the salary schedule contained in that act.

Very truly yours,
FORREST H. ANDERSON
Attorney General