

VOLUME NO. 37

OPINION NO. 46

COUNTIES - The Board of County Commissioners must pay the salaries of county officers and assistants monthly and cannot pay salaries semi-monthly; PUBLIC OFFICERS - The Board of County Commissioners must pay the salaries of county officers and assistants monthly and cannot pay salaries semi-monthly; COUNTY COMMISSIONERS - The Board of County Commissioners must pay the salaries of county officers and assistants monthly and cannot pay salaries semi-monthly; OFFICES AND OFFICERS - The Board of County Commissioners must pay the salaries of county officers and assistants monthly and cannot pay salaries semi-monthly; REVISED CODES OF MONTANA, 1947 - Section 25-601.

HELD: The Board of County Commissioners must pay the salaries of county officers and assistants monthly and cannot pay salaries semi-monthly.

19 July, 1977

J. Fred Bourdeau, Esq.
Cascade County Attorney
Cascade County Courthouse
Great Falls, Montana 59401

Dear Mr. Bourdeau:

You have requested my opinion concerning the interpretation of section 25-601, R.C.M. 1947, on the following specific question:

Is it mandatory that the Board of County Commissioners pay the salaries of county officers and assistants monthly or may salaries be paid semi-monthly?

Section 25-601, R.C.M. 1947, provides:

PAYMENT OF SALARIES OF COUNTY OFFICERS ASSISTANTS.
The salaries of the several county officers and their assistants must be paid monthly out of the General Fund of the county, upon the order of the Board of County Commissioners,

This language has not been interpreted by the Montana Supreme Court. However, the Court has discussed the Legislature's use of the word "must" when imposing a duty upon a public officer. Merchants Credit Service v. Choteau Co. Bank, 112 Mont. 229, 114 P.2d 1074 (1941); State ex rel. O'Connor v. McCarthy, 86 Mont. 100, 282 P. 1045 (1929). In both instances the Court adhered to the following interpretation:

Throughout these sections, it will be noted in each reference to an act, with the exception of the finding as to the correctness of the claim presented to the council, the legislature used the verb "must", which denotes "obligation" as "we must obey the laws" (Webster), and, when used to impose a duty, it is mandatory and peremptory, excludes discretion, and imposes upon the officer an "absolute duty to perform the requirements of the statute in which it is employed." (Emphasis added.)

The Legislature has used the verb "must" when imposing a duty upon the county commissioners to pay county officers and assistants monthly out of the general fund. Section 25-601, R.C.M. 1947. Consequently, the county commissioners have an absolute duty to perform the requirements of section 25-601, R.C.M. 1947, in which the verb "must" is employed.

THEREFORE, IT IS MY OPINION:

The Board of County Commissioners must pay the salaries of county officers and assistants monthly and cannot pay salaries semi-monthly.

Very truly yours,

MIKE GREELY
Attorney General