

Codes, Distribution Of. Legislative Members, Receipt of Codes By.

Section 15 of Chapter 85, Laws 1907, in so far as to give to members of the legislature of that year copies of the Revised Codes of Montana to be held by such members as their personal property, is in violation of the constitution and void.

Helena, Montana, August 11, 1908.

Hon. A. N. Yoder,
Secretary of State,
Helena, Montana.

Dear Sir:—

Your letter of the 6th inst. received, in which you make the following request for an opinion, to-wit:

“I respectfully request an opinion in writing, as to the

construction of Section 15, page 207 of Session Laws 1907, which reads as follows:

"The secretary of state upon receipt of said published codes shall distribute the same, or so many of them as may be necessary, in the same manner and to the same officers and offices as session laws are distributed."

Under this section, is each member of the legislature entitled to a copy of the codes? If the section should be construed, has the legislature a right under the laws of our state, to pass such a law, or in other words vote themselves a copy of the codes."

Section 12 of Chapter 85, Laws of 1907, provides that, when the new codes are printed, 1,000 sets shall be delivered to the secretary of state, and Section 15 of the same chapter (quoted above) provides that the secretary of state shall distribute so many of said 1,000 codes as are necessary to supply the officers and offices mentioned in Section 402 of the Political Code, as amended by Chapter 86, Laws 1907; that is, that he must distribute said codes "in the same manner and to the same officers and offices as session laws are distributed;" and said Section 402, as amended, provides the manner, and names the officers and offices, to whom session laws are distributed.

Section 403 of the Political Code provides that the secretary of state must indelibly mark each book distributed to officers in this state, except legislative officers, and that the books so marked remain the property of the state, and must be by the officers receiving them delivered to their successors. It is apparent from the language of said Section 403 that books distributed to officers of the state, other than legislative officers, are distributed to the offices and do not become the personal property of the particular officers receiving them. While on the other hands, the session laws distributed to the legislative officers, become their personal property, as they are not marked and are not required to be turned over to their successors in office.

This brings us to the second question in your letter, viz:

"Has the legislature a right, under the laws of our state, to pass such a law, or in other words vote themselves copies of the codes?"

Section 31, Article V of the state constitution, reads as follows:

"Except as otherwise provided in this constitution, no law shall extend the term of any public officer, or increase or diminish his salary or emolument after his election or appointment."

The last paragraph of Section 5 of Article V of the constitution reads as follows:

"After the first session, the compensation of the members of the legislative assembly shall be as provided by law; provided that no legislative assembly shall fix its own compensation."

Section 220 of the Political Code fixes the compensation of the members of the legislative assembly, and reads as follows:

"Members of the legislative assembly shall receive six dollars per day, payable weekly during the session of the legislative assembly, and twenty cents per mile for each mile of travel to and from their residences and the place of holding the session."

And Section 221 fixes the salary of the president of the senate and speaker of the house at ten dollars per day, and the same mileage as other members.

The question then arises as to whether a law, giving the members of the legislature copies of the codes, is increasing their emoluments, and therefore in violation of the above constitutional provisions. The word "emolument" is defined as follows:

"Emolument is the profit arising from office or employment; that which is received as compensation for services, or which is annexed to the possession of office as salary, fees, and perquisites."

3 Words and Phrases, 2367.

Webster's Dictionary.

Century Dictionary.

The word "perquisite" is defined as follows:

"An incidental emolument, profit, gain, or fee over and above the fixed and settled income, salary or wages; something received incidentally and in addition to regular salary, wages, fees, etc."

6 Words and Phrases, 5321.

Webster's Dictionary.

Century Dictionary.

As has been pointed out above, the law fixes the salary of the members of the legislature, and allows them mileage for the purpose of covering all their traveling expenses. Therefore, when they pass a law, giving to themselves volumes of the Codes of Montana, which have a value of \$12.00 or more per set, it is certainly "something received incidentally and in addition to their regular salary" and mileage. While the amount received by each member, under this law, is small, it aggregates to the state over \$1,000.00; and if we should hold that the legislators, as a matter of law, had the right to pass a bill, giving to themselves these codes, under the same construction of the law, subsequent legislators would have the right to vote each member complete sets of the Montana reports, for the purpose of assisting them to construe the codes.

You are therefore advised that, in our opinion, the part of said Section 15 of Chapter 85, Laws of 1907, and of said Section 402, as amended, and 403, which provides for the distribution of the codes to the members of the legislature, and makes the same the personal property of such members, is unconstitutional and void.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.