

Officers, Assignment of Unearned Salary. Salary, Assignment by Public Officer. Salary, Payment of When Claimed Under Assignment and Attachment.

There is no statute authorizing the assignment of unearned salary by public officers, and we know of no decision of our supreme court passing on the validity of such an assignment. When an unearned salary has been assigned, and an attachment is thereafter levied against such salary, the disbursing officer should pay the same into court and require the claimants to litigate their rights.

Helena, Montana, January 3, 1910.

Hon. Thomas J. Walker,
County Attorney,
Butte, Montana.

Dear Sir:—

I am in receipt of your request over the telephone, requesting an opinion upon the following proposition:

A deputy county officer, on the first of December, assigned his salary for the month of December. On the 28th of that month his salary was garnisheed by a creditor. The question submitted is as to whether such an assignment of public officers unearned salary is valid as against an attachment suit and the garnishment of such salary.

Section 6692, revised codes, authorizes the attachment of officers' salary, but we find no statute authorizing the assignment of unearned salary of public officers, and we know of no decision of our supreme court construing the validity of such an assignment of future salary. In the absence of a statute, the great weight of authority is to the effect that an assignment by a public officer of the unearned salary of his office is

void as against public policy.

See 4 Cyc. pp. 19, 20, and cases cited.

However, it will be noticed there are several states that hold that such assignment can be made. Therefore, the question is an open one, so far as we know in this state. Under such circumstances I would advise you to follow the same procedure that we follow in cases where the state auditor receives assignments of state official's salaries which are attached by creditors. In all such cases we have been advising the auditor not to pay the assignee or the attaching creditor. We simply bring an action in the name of the state auditor against the assignee and the attaching creditor, under section 6495, revised codes, and deposit the money with the clerk of the court, asking that the several claimants for such money be compelled to appear and establish their respective claims to the amount in controversy.

Until the question of the assignment of unearned salary is settled by a decision of our supreme court this is the only safe course to pursue in advising the officer whose duty it is to pay out the money due on such salary.

Yours very truly,

ALBERT J. GALEN,

Attorney General.