

District Judges, Expenses. Expenses, District Judges. Senate Bill No. 24, Constitutionality of. Constitution, Senate Bill No. 24 Within.

Senate Bill No. 24 providing for payment of expenses of District Judges incurred on account of holding court in counties other than the counties where they reside is not repugnant to the state constitution.

January 18, 1911.

Hon. W. F. Meyer,  
Chairman, Judiciary Committee.  
Senate Chamber,  
Helena, Montana.

Dear Sir:

I beg to acknowledge the receipt of your verbal request for the opinion of this department as to the constitutionality of Senate Bill No. 24, being "A bill for an act providing for the payment of the expenses of district judges incurred on account of holding court in counties other than the counties where they reside."

The only provision of the constitution of Montana to which the proposed bill could be repugnant, in my opinion, is Sec. 30 of Art. VIII, providing:

"No justice of the supreme court nor judge of a district court shall accept or receive any compensation, fee, allowance, mileage, perquisite, or emolument for or on account of his office in any form whatever except the salary provided by law."

I have been unable from an examination of the constitutions of other states to find any adjudication upon a similar provision, and it is, therefore, necessary to look to the constitutional provision itself with reference to the intent of the constitutional convention in adopting the above section. It is my opinion that its intention in adopting such section was to prohibit a justice of the supreme court or judge of a district court from receiving any profit or gain for or on account of his office other than the salary provided by law, and was not intended to mean that such justices or judge should from his own means or out of his salary pay the actual and necessary expenses incurred by him in attending to the duties devolving upon him by virtue of his office; that it did not contemplate that a district judge whose district comprises more than one county should set up and maintain an establishment in each county of his district, and that the element of gain over and above the salary provided by law was the only object of the constitutional convention in accepting such provision. It is my opinion that a district judge is entitled to his actual and necessary traveling expenses incurred on account of holding court in counties within his district other than the county where he resides under the general principle of law; that the salary of an officer is his compensation for his time and service, and that he is not called upon to expend for the benefit of the state or the electoral district which he represents any portion of such salary.

You are therefore advised that the terms of said Senate Bill No. 24, in my opinion, do not contravene the provisions of the state constitution.

Yours very truly,  
ALBERT J. GALEN,  
Attorney General.