

Salaries of Officers Appointed by Governor, When May Be Increased or Diminished. Officers, Salaries of Appointed by Governor When May Be Increased or Diminished. Salaries of Clerks Appointed by Head of Department, When May Be Increased or Diminished.

If the office is created by or provided for in the constitution itself, the salary or emoluments of the officer cannot be increased or diminished during his term of office; but if the office is created by the legislative assembly, the legislature has the right to abolish the office or to increase or diminish the salary of the officer, or increase or diminish the services required of him.

The salary of a clerk in an office may be increased or diminished at the will of the legislature. The clerk is not employed for any definite term, and the superior officer ap-

pointing him has the right to remove him at pleasure. The section of the constitution providing that no law shall extend the term of any public officer, or increase or diminish his salary after his election or appointment, only embraces within its provisions officers who are elected or appointed for some specific or definite term and has no application to an officer who simply holds at the will of the appointing power.

January 23, 1911.

Hon. Edwin L. Norris,
Governor,
Helena, Montana.

Dear Sir:

Your letter of January 20th has been received, requesting my opinion upon the following questions:

1. Can the salary of any officer appointed by the governor be increased or decreased during the term for which he has been appointed and has qualified?

2. Can the salary of a clerk in the office of an appointive state officer, whom is appointed by the head of the department, be increased or decreased during the term for which appointed?

Section 31, Article V, of the Constitution of the state of Montana, provides in substance 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."

On March 29, 1907, I gave to Honorable Harry R. Cunningham an opinion which covers the questions propounded by you, which opinion is reported in Opinions of Attorney General 1906-08 at page 61, and I respectfully call your attention to that opinion.

If the office is created by or provided for in the constitution itself, I am of the opinion that the salary or emoluments of the officer could not be increased or diminished during his term of office, but if the office is created by the legislative assembly the legislature would have the right to abolish the office or to increase or diminish the salary of the officer, or increase or diminish the services required of him.

See, 29 Cyc. page 1427-8 and 9.

With reference to your second question, the salary of a clerk in an office might be increased or diminished at the will of the legislature. The clerk is not employed for any definite term and a superior officer appointing him has the right to remove him at pleasure. The section of the constitution above referred to only embraces within its provisions officers who are elected or appointed for some specific or definite term and has no application whatever to the officer who simply holds office at the pleasure of the appointing power.

Yours very truly,

ALBERT J. GALEN,

Attorney General.