

Constitutional Law, Appropriation to Pay For Past Service.

An appropriation to pay for services after they have been rendered and performed at a salary prescribed by law is unconstitutional.

February 23, 1911.

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

Dear Sir:

I am in receipt of your letter of February 22, 1911, wherein you ask my opinion as to whether Senate Bill No. 106, being a bill for an act entitled, "An act to pay the increase of salary of the second assistant state examiner as provided for by appropriation" is in accordance with the provisions of the constitution of the state of Montana.

You are advised that in my opinion Senate Bill, No. 196, is unconstitutional, in that it conflicts with the provisions of Section 29, Article V, of the constitution, which provides:

"No bill shall be passed giving any extra compensation to any public officer, servant, or employee, agent or contractor, after services shall have been rendered or contract made
* * * * * except as may be otherwise provided herein."

Section 214, Revised Codes of 1907, provides that the state examiner may appoint a first and second assistant and fixes the salary of the second assistant at \$1,500.00 per annum. The salary being fixed definitely by statutory enactment cannot be changed except by another legislative enactment and the mere fact that the eleventh legislature in

1909 passed a general appropriation bill which carried an item of \$1800.00 per year, or so much thereof as might be necessary for salary of the second assistant state examiner, does not by implication or otherwise repeal the special act dealing with the appointment and compensation of the second assistant state examiner, as provided for in Section 214 of the Revised Codes. The constitutional provision above referred to is designated by the supreme court, in *Lloyd vs. Silver Bow County*, 11 Mont., page 412, as a constitutional restriction upon the powers of the legislative assembly. Having been so construed in this case, I am constrained to hold that the constitutional restriction was violated by the passage of Senate Bill, No. 106.

I am further of the opinion that the holding of the supreme court in the case of *Snyder vs. Cunningham*, 39 Mont. 166, does not in any way run counter with the opinion herein expressed, as in that case the salary of the supreme court stenographer was not fixed by law and the court merely held that it had the authority to fix his salary at any sum within the appropriation.

Yours very truly,

ALBERT J. GALEN,
Attorney General.