

Salary of Stenographer, To Secretary Bureau of Child and Animal Protection. Adjutant General, Stenographer of.

Under the provisions of Chapter 81, Laws of 1912, the annual compensation to be paid the stenographer of the secretary of the Bureau of Child and Animal Protection, is \$900.00 per annum. The same Act provides an additional salary or compensation of \$300.00 per annum to be paid him for services performed by him in the office of the adjutant general. Though the Thirteenth Legislative Assembly appropriated \$1,000 to be paid him as stenographer in the office of the secretary of the Bureau of Child and Animal Protection, he is not entitled to receive more than the salary fixed by law for his services in that office.

The appropriation for the current year for his services in the office of the adjutant general is \$200. As his salary is fixed by law as above set forth, the auditor is authorized to draw his warrant only for the sums appropriated for his services in the office of the adjutant general, namely, \$200 per annum, and therefore, the remedy for salary earned but not paid, must come through a deficiency bill.

May 19th, 1913.

Hon. M. L. Rickman,
Secretary Bureau of Child and Animal Protection,
Helena, Montana.

Dear Sir:

Referring to your letter of April 19th, 1913, wherein inquiry is made concerning the salary to be paid to the stenographer of your office, you are advised as follows:

Chapter 81, page 148, of the Session Laws of the Twelfth Legislative Assembly, is a statute prescribing the salaries to be paid to certain appointive officers. By it the annual compensation of the stenographer of your office is fixed at nine hundred dollars. The same act provides an additional salary or compensation to be paid to your stenographer for services performed by him in the office of the adjutant general. This additional compensation is fixed at three hundred dollars per annum. The office filled by the stenographer is a dual one, in that he is an officer connected with your office as well as that of the adjutant general, and as such is entitled to the compensation attached to each, as fixed by the act. The Thirteenth Legislative Assembly by the provisions of House Bill No. 420, Session Laws of the Thirteenth Legislative Assembly, page 506, approved March 8th, 1913, which act is a general appropriation measure and in no sense one fixing the salaries for officers, appropriates for the payment of the salary of the stenographer referred to, for the period commencing March 1st, 1913, and ending February 28th, 1914, the sum of one thousand dollars for his services in connection with the bureau of child and animal protection, and the sum of two hundred dollars for his services in connection with the office of the adjutant general. Since the act above referred to fixes his salary for services in connection with your office at nine hundred dollars, the mere fact that an appropriation has been made in excess of this sum does not have the force or effect of changing his compensation, or entitling him to receive more from this source than the law allows, namely, nine hundred dollars. As already stated, the appropriation for the current year for his services in connection with the office of the adjutant general is only two hundred dollars, a specific appropriation, whereas, his salary for his services in connection with this office is fixed by the act above referred to at three hundred dollars. Sec. 34, Art. V of the Constitution provides:

"No money shall be paid out of the treasury, except upon appropriations made by law, and on warrant drawn by the

proper officer in pursuance thereof, except interest on the public debt."

Paragraph 17 of Sec. 170 of the Revised Codes of Montana, 1907, provides that it is the duty of the state auditor

"To draw warrants on the state treasurer for the payment of moneys directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law, and upon an unexhausted specific appropriation provided by law to meet the same."

This paragraph further provides that every warrant must be drawn upon the funds out of which it is payable and specify the services for which it is drawn, when the liability accrued and the specific appropriation applicable to the payment thereof. It will thus be seen that while the salary of your stenographer for his services in connection with the office of the adjutant general remains fixed at three hundred dollars per annum, the state auditor is authorized to draw his warrant upon the state treasurer in payment for his salary a sum not exceeding two hundred dollars for the current year. His remedy for salary earned but not paid must come through a deficiency bill.

Very truly yours,

D. M. KELLY,
Attorney General.