

Inspectors of Weights and Measures, Salary of. Salary of Inspectors of Weights and Measures, Payment of. Sec. 2, Chap. 83, Laws 1913, Constitutionality of. Constitutionality, of Sec. 2, Chap. 83, 1913.

Counties comprising a district are liable for payment of the salary of the inspector of weights and measures, but the expenses of such inspector must be allowed and paid by the state.

Sec. 2, Chap. 83, Laws 1913, is constitutional.

October 17th, 1913.

Hon. A. M. Alderson,
Secretary of State,
Helena, Montana.

Dear Sir:

I am in receipt of your inquiry, relative to the construction of that part of Chap. 83, Laws of 1913, relating to the payment of the salaries by inspectors of weights and measures, the question being:

"Are the salaries and expenses of inspectors appointed, a proper charge against the county or districts, or should the same be paid by the state?"

In Subdiv. B, Sec. 2, of said chapter, it is provided that the

salary and expenses of the inspectors shall be paid by the county or counties comprising the district. While the last clause of Sec. 3 of the act reads:

"All bills and accounts of expenses incurred by the state deputy sealer of weights and measures, and by the inspectors of weights and measures, shall be presented to and allowed by the state board of examiners, in the same manner as provided for other claims contracted for and in behalf of the State of Montana."

This last clause of Sec. 3 is in direct conflict with the provisions of Subdiv. B of Sec. 2, and under the statutory rule of construction the provisions of Sec. 3 must govern.

It is also a rule of construction that where the various provisions of a statute are in apparent conflict, such provisions should, if possible, be so construed and harmonized as to give effect to the whole thereof. I take it also that it is a rule of construction that where a statute contains several provisions it should be so construed as to give effect to as many of these provisions as possible, unless such construction is prohibited by the positive terms of the act itself.

The provisions of said Sec. 3 appear to relate directly to accounts of expenses, while the provisions of Subdiv. B of Sec. 2 relate to salary and expenses. I am, therefore, of the opinion that the district, or counties composing the district, are liable for the payment of the salaries of the inspectors under the provisions of said Subdiv. B, but that their expenses must be allowed and paid by the state, under the provisions of Sec. 3.

The question is also submitted as to the constitutionality of Sec. 2 of this chapter, for the reason that the office of inspector is strictly a state office, and that it is improper to charge the county with the salary thereof. It is most probably true that this office is a state office, and the inspector is appointed by a state officer, to-wit: the secretary of state. A somewhat analogous case may exist in the appointment of an official court stenographer. They are appointed by a state officer, to-wit: the district judge, and still the counties are chargeable with their salaries and expenses. Whatever doubt may exist as to the constitutionality of this section, it is not so clearly in violation of the provisions of our state constitution as to justify a holding by this department that it is void, for it is only when a statute is so clearly in violation of the constitution as to leave no substantial room for doubt that an administrative or executive department of the government is justified in holding it void. So long as there is any substantial doubt whatsoever, it is the peculiar function of the courts to decide the question.

I, therefore, hold that the statute, in the absence of any decision of any court to the contrary, is not unconstitutional.

Yours very truly,

D. M. KELLY,
Attorney General.