

**Officer, Duties of. Salary, of State Officer. Vacation, Not Named in Law. Increase of Salary, Not Permitted. State Board, Province and Duty of.**

There is no provision of law granting a vacation to any state officer, or for granting him pay while on vacation, or granting him extra pay by his principal or by the Board.

It is not within the province of any board to increase or diminish salaries where same have been fixed by law.

Where extra duty is placed upon an officer, the law so fixing the duty may grant him extra pay therefor.

Whether deputy superintendent is entitled to pay from the state for teaching during the time he is absent from his office, is a matter for the State Board of Examiners to determine from the circumstances of the case.

July 14, 1914.

Hon. William Keating,  
State Auditor,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter submitting the proposition:

"Relative to the liability of the state in the sum of \$250, to H. H. Swain, for services performed as an instructor at the 'six week's summer school at the State University,' being classed under the head of 'non-resident faculty.'"

It appears from your letter that Mr. Swain is now deputy State Superintendent of Public Instruction, and drawing a salary as such. Reference is also made in your letter to vacations or leaves of absence, sometimes allowed to employees, or taken by officials.

The position of Deputy State Superintendent of Public Instruction is one created by law (Sec. 143, Rev. C.), with a fixed salary of \$2,100.

There is not any provision in the law relating to vacations by either employees or officials. Hence, in contemplation of law, all employees, as well as all officials, are continually in the discharge of their duties as such, and vacations or permission to be absent, are not granted for financial gain, but as a matter of recreation, and at a time when the work in the office will permit the party being absent, and the work in the office is in the meantime kept up by other members of the force, or held in abeyance until the return of the party.

It is also fundamental that where the statute fixes a salary, emolument or compensation, no authority rests in any board or individual to increase or diminish this amount. Hence, it necessarily follows that this compensation cannot be allowed to Mr. Swain on the theory that he is on vacation, nor on the theory that his salary should be increased, for that is a matter wholly of legislative regulation.

The only ground on which it can be allowed is that extra duties have been placed upon him by direction or solicitation of a state board,

vested with authority of law so to do, in such manner as to bring the case within the general principles that where extra duty is required of an official, it is within the power of the legislature to permit or allow extra compensation. This general doctrine was analyzed and affirmed by our Supreme Court in

State vs. Granite Co. Commrs. 23 Mont, 250,  
cited in Opinions of Attorney General, 1908-10, p. 95, and in Opinions of Attorney General, 1906-08, p. 185.

There is also involved in this case a question of general public policy, which proposition should receive the consideration of the State Board of Examiners, which board is directly charged with the responsibility relating to the expenditure of public moneys. I would, therefore, recommend that this matter be referred to the State Board of Examiners for action.

Yours very truly,

D. M. KELLY,  
Attorney General.