

County Attorneys, Salaries of How Computed. State Auditor, Authority of in Computing Salaries of County Attorneys.

The class of a county is determined by the Board of County Commissioners, and their determination is presumed correct. The State Auditor has no authority to receive other evidence than the certificate made by the chairman of the Board of County Commissioners.

April 14, 1915.

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

Dear Sir:

I have your communication under date the 12th instant, submitting to me correspondence between yourself and Hon. H. W. Bunston, county attorney of Big Horn County, relative to his salary claims for the months of January and February, 1915. It seems that Mr. Bunston is claiming salary as for a county attorney of a county of the sixth class. You state that you base your judgment as to the class of the county upon the report certified by the clerk of Big Horn County to Mr. J. J. Ryan on November 7th, 1914, which certificate shows the value of something under five million dollars of assessed valuation.

Your duties in this matter are defined by an Act of the legislature approved March 2nd, 1893, entitled:

"An Act to amend Sections 3 and 4 of an Act entitled:

'An Act concerning compensation of county, district and township officers;' approved March 6th, 1891."

found in the laws of Montana of the Third Session, 1893, at page 57, et seq. So much of this law as is necessary to our purposes here, is as follows:

"And it shall be the duty of the Auditor of the State, upon presentation of a certificate to him, signed by the Chairman of the Board of County Commissioners of the county in which such certificate is made, or in his absence from the county seat, or inability to act, then any member of the Board of County Commissioners of said county, and countersigned by the County Clerk and Recorder of said county, naming the amount of salary which may be due to the County Attorney, to issue to such County Attorney a warrant upon the State Treasurer, for so much of the monthly salary as may be due to such official by the State, and such warrant shall be issued at the end of each and every month by such Auditor, and when so issued, shall be registered and paid by the State Treasurer in the same manner as other warrants regularly drawn against the funds of the State."

The certificate mentioned here is your authority for issuing a warrant to the County Attorney for salary, and you need not inquire further. Having followed the mode outlined by the law governing your action in this matter, no question could be raised as to the propriety of your doing so. The question of the class of the county is one to be

determined by the Board of County Commissioners under the provisions of Section 2975, Revised Codes of Montana, 1907, and it is to be presumed that they have performed the duties imposed upon them by law. Attached to the correspondence was a certificate signed by the Chairman of the Board of County Commissioners, and attested by the County Clerk, which it seems to me is sufficient under the provisions of the law quoted to entitle Mr. Bunston to his salary.

I am of the opinion therefore, that the warrant should issue for the amount named in the certificate.

Yours very truly,

D. M. KELLY,

Attorney General.