

**Attorney General, Term of Office of. Resignation, of  
Attorney General. Successor to Attorney General, Right of  
to Increased Salary. Increased Salary, Right of Successor  
to Attorney General. Salary of Attorney General, Right of  
Successor to Increased.**

For the reason that the language "during his term of office" refers to the incumbent, rather than to the term for which he was elected, a person appointed to fill a vacancy in the office of Attorney General at this time is entitled to the salary of \$4,500 per year, as prescribed by the Act of the last legislature.

May 15, 1915.

Hon. S. V. Stewart, Governor,  
Helena, Montana.

Dear Sir:

I have yours of the 8th instant, wherein you inquire whether or not a person appointed to fill a vacancy caused by the resignation of the Attorney General is entitled to the salary as provided by law at the time of his appointment, the salary having been raised after the election of the present incumbent, and before the expiration of the term for which he was elected.

Section 31, Article V of the Constitution, provides:

"Except as otherwise provided in this constitution, no law shall extend the term of any public officer or increase or diminish his salary or emolument after his election or appointment."

Section 4 of Article VII of the Constitution, which provides for the compensation of state officers, contains the following:

"The compensation enumerated shall be in full for all

services of said officers respectively rendered in any official capacity or employment during their respective terms of office, and the salary of no official shall be increased during *his* term of office."

This and similar passages in other state constitutions have been before the different courts of this country, but the decisions have not been uniform. Our Supreme Court has never been called upon to pass upon this question. However, so far as my information goes, it has always been assumed that the constitutional prohibition did not apply to a person appointed to fill a vacancy after the passage of a law increasing the salary of the office. This matter was before the Supreme Court of Wisconsin in the case of *State ex rel Bashford vs. Frear*, 138 Wis., 536, 120 N. W. 216, which case was decided March 9th, 1909, and reviews the former cases. The Supreme Court of Wisconsin came to the conclusion that the constitutional prohibition affected the encumbent at the time of the passage of the law increasing the salary, but that it did not affect a person appointed to fill a vacancy after the passage of the act, and that such person was entitled to draw the salary. The language of their constitution is exactly the same as the language used in Section 4 of Article VIII, namely: "during his term of office." The pronoun "his" is a personal pronoun, and I think the court properly comes to the conclusion that "his term of office" refers to the encumbent at the time of the passage of the act, and not to *the* term for which he was elected. It is proper to note that the framers of the Constitution in prohibiting the appointment of persons elected to the legislative assembly from holding office during the term, used the following language:

"No senator or representative shall, *during the term for which he shall have been elected*, be appointed to any civil office under the state."

Section 7, Article V, Constitution.

It seems plain to me that if the framers of the Constitution had intended that the prohibition against the increase of salary should continue during the term for which the encumbent was elected, they would have used the same language with reference to the increase of salaries as they did with reference to the appointment of members of the legislative assembly to office.

I am not unaware of the rule to the contrary in California and in Illinois.

See *Larew v. Newman* (Cal.), 23 Pac. 227; *Storke v. Coux* (Cal.).

*Foreman vs. People*, 71 N. E. (Ill.) 35.

Both the California and Illinois cases were decided prior to the Wisconsin case above cited, the Wisconsin being the latest expression of any court that I have been able to find. For the reason that in my judgment the language "during his term of office" refers to the encumbent rather than to the term for which he was elected, I am of the opinion that a person appointed to fill a vacancy in the office of the Attorney General at this time is entitled to the salary of \$4,500 per year as prescribed by the Act of the last legislative assembly.

Yours very truly,

D. M. KELLY,

Attorney General.