

Legislative Assembly, Officers and Employees of. Employees and Officers, of Legislative Assembly. Committee Clerks and Pages, Number of. State Auditor, Warrants Issued By.

The clause "as many committee clerks and pages as the Senate (the House) may from time to time, require," contained in Sections 65 and 66, Revised Codes, is repugnant to the provisions of Article V, Section 28, Constitution, and void, in that they do not fix the number of officers and employees.

January 12, 1915.

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

Dear Sir:

I am in receipt of your communication of this date requesting my opinion as to how you as state auditor, are to be guided in the matter of issuing warrants for officers and employees of each house of the Legislative Assembly, now in session. Article V, Section 28 of the Constitution, provides that:

"The Legislative Assembly shall prescribe by law, the number, duties and compensation of the officers and employees of each house, and no payment shall be made from the state treasury or be in any way authorized to any such person, except to an acting officer or employee elected or appointed in pursuance of law."

The Senate officers and employees, provided for by law, are enumerated in Sections 62 and 65, and the officers and employees of the House of Representatives are enumerated in Sections 63 and 66, Revised Codes

of Montana, 1907. The officers and employees of the Senate consist of a President, President pro tem, Secretary, Assistant Secretary, Journal Clerk, and a Sergeant at Arms; and the Senate may elect an Assistant Sergeant at Arms, and Enrolling Clerk, an Engrossing Clerk, one Janitor, one Day Watchman, one Night Watchman, one Chaplain, two pages, and three Committee Clerks. The officers and employees of the House of Representatives consist of a Speaker, Speaker pro-tem, Chief Clerk, Assistant Chief Clerk, Journal Clerk, and a Sergeant at Arms; and the House may elect an Assistant Sergeant at Arms, an Enrolling Clerk, an Engrossing Clerk, one Door Keeper, one Janitor, one Day Watchman, one Night Watchman, one Chaplain, three Pages and four Committee Clerks.

Section 65, relating to officers and employees of the Senate, contains the following clause:

“as many committee clerks and pages as the Senate may from time to time require.”

and Section 66, relating to House officers and employees, contains a similar clause, which reads as follows:

“as many committee clerks and pages as the House may from time to time require.”

These clauses are in my opinion repugnant to the provisions of Article V, Section 28 of the Constitution, which requires that the Legislative Assembly shall prescribe by law the number of officers and employees of each House. The clauses quoted above do not undertake to fix the number of clerks and pages, but undertake to lodge discretion in the respective branches of the Legislature as to what the number in the House and Senate shall be. Such was not the intent of the framers of our Constitution. In my judgment these blanket clauses are void.

There is, of course, no limitation upon the number of officers and employees which may be provided for each house, but provisions must be made in the orderly way pointed out by the Constitution.

Chapter 37 of the Laws of the Thirteenth Legislative Assembly fixes the per diem salaries to be paid to the officers and employees of both Houses. This law is controlling as to the amount of salary which each officer and employee shall receive, but it is not controlling as to the number of employees either House is entitled to elect or appoint.

Yours very truly,

D. M. KELLY,
Attorney General.