

**County Officer—Salary—Clerk of District Court—Classification of County, Change Of.**

Where the classification of a county is raised by operation of law, the Clerk of the District Court holding over is not entitled to the increase of salary incident thereto.

March 1, 1919.

Mr. Jesse C. Henderson,  
County Attorney,  
Shelby, Montana.

Dear Sir:

Your letter of February 4th submits to this office substantially the following question:

“Where a county is changed from the seventh to the sixth class by operation of law, does the Clerk of the District Court holding over under the new classification receive the increased salary which the higher classification prescribed shall be paid to the person holding such office?”

The determination of this question hinges upon the construction of Section 31 of Article 5 of the Constitution, which provides as follows:

“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.”

Your opinion states concisely your reasons for the conclusion you have reached and I appreciate your having briefed the law for the assistance of this office in rendering an opinion.

While realizing that the construction of this class of constitutional provisions has not always been harmonious, either in this office or before courts of last resort of the several states, I am of the opinion that the better reasoning supports the conclusion of former Attorney General Galen, (Opinions of the Attorney General, Volume 4, page 20) rather than that of Attorney General Kelly, (Volume 6, page 152). I do not believe that under the constitutional provisions above quoted, a hold-over officer is entitled to receive increased compensation, even though the law authorizing such increase be a law of general operation enacted prior to the election of such officer.

The Constitution says "No law shall increase or diminish" an officer's salary. Whether a *law* be one on the statute books at the time of an officer's election or one passed thereafter, it is nevertheless a *law increasing salary after his election* and is therefore within the constitutional provisions. Neither do I find myself able to concur in your conclusion that the words "except as otherwise provided", take the case out of the rule announced. It is not "otherwise provided in this Constitution" that any law may increase or decrease the salary of any officer after his appointment; the provision that the Clerk of the Court shall receive such compensation as is provided by *law* cannot, in my judgment, have been intended to remove that office from the general requirements that the "*law*" should not increase his salary during his term of office.

The conclusion which I have reached finds support in the case of Guthrie vs. Board of County Commissioners of Converse County, a Wyoming case, reported in 50 Pac. 229. Without quoting, you will find upon examination of this case that it is squarely in point, both as to law and to the facts which you submit. The following cases also give support to this conclusion, although they are not as specific in point as the Wyoming case:

Storke vs. Gorrux, (Cal.) 62 Pac. 68;  
Larew vs. Newman, (Cal.) 23 Pac. 227;  
Pridham vs. Lewis, (Cal.) 158 Pac. 333;  
Bostworth vs. Ellison, (Ky.) 147 S. W. 400;  
Foreman vs. People, (Ill.) 71 N. E. 35;  
State ex. rel. Bashford vs. Frear, (Wis.) 120 N. W. 216;

For the reasons above given I am of the opinion that the present incumbent of the office of the Clerk of the District Court of Toole County is entitled to a salary of \$1200.00 per year.

Respectfully yours,

S. C. FORD,

Attorney General.