

County Officers—Deputies—Salaries—School Trustees—Voting—County Commissioners.

Deputy county officers are statutory officers, and salaries can be increased or decreased at any time.

Where there is a tie vote for school trustee, there would be no election.

County Commissioners are compensated at the rate of \$8.00 per diem while inspecting bridges and highways, plus their expenses, providing an order has been made therefor.

April 11, 1919.

Mr. Leonard Goodwin,
County Attorney,
Hamilton, Montana.

Dear Sir:

I have your letter of the 9th inst., submitting several questions for my consideration.

First, with reference to Substitute for Senate Bill No. 64, I agree with your opinion that the same is now in force and controls the payment of salaries of undersheriff and deputies now in office. Regarding your question as to the "legality" (constitutionality) and "general effect" of the law, I do not know as I understand just what you mean. There can be no question regarding its constitutionality. Deputies are statutory officers, that is, created by statute and not by the constitution, consequently there is no prohibition against increasing or decreasing their salaries while they are holding office. The constitutional provision against increasing or decreasing the compensation of officers during their terms of office only applies to those officers whose offices are created by the Constitution and does not apply to officers whose offices are created by statute.

Regarding the manner in which a tie vote for school trustee shall be determined there is no statutory provision governing the same. I am of the opinion that in such a case there would be a failure to elect, consequently a vacancy would exist which should be filled in the manner provided by law. Subdivision 5 of Section 502, Chapter 76, Session Laws of 1913, provides that a vacancy in the office of school trustees shall be filled by appointment by the county superintendent of schools subject to confirmation by the remaining members of the board, if those remaining constitute a quorum, which trustee so appointed shall hold office until the next annual election, while Subdivision 6 of the same section provides that when a vacancy occurs by death, resignation, *failure to elect at the proper time*, removal from the district, or other cause, the fact of such vacancy shall be immediately certified to the county superintendent by the clerk of the school district, and the county superintendent shall immediately appoint in writing some competent person who shall qualify and serve until the next annual election. I have heretofore held that these two provisions should be construed

together, and that whenever there is a vacancy such fact must be certified by the clerk of the district to the county superintendent who must appoint some person to fill the vacancy but that such appointment must be confirmed by the remaining members of the board, if those remaining constitute a quorum.

Regarding the compensation of members of the board for inspecting a bridge pier, being weakened by high water, your attention is directed to Sections 12 and 13 of Chapter 111 of Chapter 172, Session Laws of 1917. Section 12 authorizes the board of county commissioners to direct the county surveyor or some member or members of the board to inspect the condition of any highway, and such member or members of the board shall receive for making such inspection pay of \$8.00 per day and actual expenses, while Section 13 provides that if any such inspection is made without a prior order therefor, the board must at its regular meeting make proper entries of such inspection.

I have heretofore held that if any member or members of the board made an inspection of any highway, without a prior order therefore, they are not entitled to pay for making such inspection, unless the board at its next regular meeting enters an order approving and ratifying the action of the member or members in making such inspection, in which case they are entitled to pay at the rate of \$8.00 per day and also actual expenses. If in this case, the board, at the first regular meeting thereof at the inspection was made, approved and ratified the same, then the two members making the inspection are entitled to their per diem and expenses, otherwise, they are not.

I am sorry to advise you that I am completely out of Vols. 1, 2 and 3 of the Opinions of the Attorney General. Vol. 7 has just been received from the printer and a copy thereof will be sent you within the next few days.

Respectfully,

S. C. FORD,

Attorney General.