

Representatives—Offices—Qualifications—University of Montana.

A member of the House of Representatives is not disqualified from serving as instructor in the University of Montana.

Dr. M. A. Brannon,
Chancellor, The University of Montana,
Helena, Montana.

My dear Dr. Brannon:

You have submitted to this office the question whether a member of the Legislative Assembly who is also an instructor in the University of Montana, employed by the State Board of Education, is an officer within the provisions of Section 7 of Article V of the Constitution, which provides:

“No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state;” * * *

In an opinion by a former Attorney General (Vol. 8, Opinions of Attorney General, p. 393), it was held that a Representative was not eligible to hold the office of Trustee of a county high school by reason of this provision.

However, the question here would seem to be whether he is holding a civil office by reason of his position as an instructor in the University of Montana, or whether he is an employee of the state. In 29 Cyc. 1366, the following distinction is made between officers and employees:

“While an office is based upon some provision of law, an employment is based upon a contract entered into by the government with the employee. The importance of the distinction is due, among other things, to the fact that, inasmuch as an employment is a contract, the Legislature of a state is not permitted by the contract clause of the Federal Constitution to pass a law impairing the obligation of the contract made with a government employee. An office, however, not being based upon a contract, is not affected by this pro-

vision of the Federal Constitution and the Legislature may provide for its termination during the term of the incumbent, and may, during such term, diminish the compensation attached to the office or increase the duties of the office without increasing the compensation." * * *

It is, therefore, my opinion that the duties required of an instructor in the University of Montana, employed by the State Board of Education, are more in the nature of an employment than an office and that they are governed entirely by the contract made between such instructor and the State Board of Education, and that, not being appointed to an office, such instructor is not within the provisions contained in Section 7, Article V, of the Constitution of Montana.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.