

Salaries—State Board of Equalization—State Board of Examiners—Employers.

Since section 5, chapter 3, laws 1923, is a special act and of a later date than section 273, it controls the latter act and authorizes the board of equalization to fix the salaries of the employees without the consent of the state board of examiners.

State Board of Examiners,
Helena, Montana.

March 28, 1927.

Gentlemen:

You have requested my opinion whether the state board of equalization has authority to raise the salaries of its employees without the consent of the board of examiners.

The following are the statutes applicable:

Section 273 of the code reads in part as follows:

“From and after the passage of this act the state board of examiners of the state of Montana shall by resolution fix and designate the number, compensation, term, and tenure of office of all assistants, clerks, and stenographers for all civil executive state officers, boards, commissions, or departments. * * *”

Section 5 of chapter 3 of the session laws of 1923 relating to the state board of equalization reads in part as follows:

“Said Board may appoint a Secretary and employ such other persons as experts, assistants, clerks and stenographers, as may be necessary to perform the duties that may be required of it, and fix their compensation, provided, however, that the total expenses of such board shall not exceed in the aggregate during any fiscal year the amount appropriated for the Board for all purposes by the legislature for such year; and provided further that no experts, or assistants shall be employed by the said Board except after written approval of the Governor filed with the Board of Examiners. * * *”

It is apparent that section 5 of chapter 3, above quoted, expressly authorizes the board of equalization to fix the compensation of its employees; also that the act provides for the written approval of the governor upon the appointment of such employees. In both these respects, namely, the method of appointment and the fixing of the compensation, section 5 of chapter 3 is inconsistent with the provisions of section 273, above quoted.

It is a well settled principle of law that in case of a conflict between a general act and a special one, the provisions of the special act govern. (State ex rel. Daly v. Dryburg, 62 Mont. 36; Reagen v. Boyd, 59 Mont. 453).

Also in the event of a conflict between an earlier and later act, the later, in point of time, will prevail. Applying these principles to the

two acts above quoted, it is my opinion that section 5 of chapter 3 of the session laws of 1923, being a special act of later date than section 273, governs, and that the board of examiners has no control over the salaries to be paid to experts, assistants, clerks and stenographers appointed by the board of equalization.

Very truly yours,

L. A. FOOT,
Attorney General.