

**State Auditor—Compensation—Insurance Commissioner  
—Salaries.**

Since the extra duties of insurance commissioner were part of the duties imposed upon the office of state auditor at the time of the election of the present incumbent the legislature may not increase the salary of that office, to take effect during his present term

State Board of Examiners,  
Helena, Montana.

March 31, 1927.

Gentlemen:

You have requested my opinion on the following question:

“Can the legislature increase the salary of the present state auditor \$600 per year as compensation for his duties as insurance commissioner, which said duties were made part of the duties of the state auditor by chapter 12, session laws of 1909?”

The legislature has the right to exact extra duties of a public officer without providing compensation for them. (State ex rel. Kranich v. Supple, 22 Mont. 184; State ex rel. Rowe v. District Court, et al., 44 Mont. 318.)

It is therefore apparent that the duties of insurance commissioner were properly part of the duties of the state auditor's office at the time the present state auditor was elected for the term of office which he is now serving, and it necessarily follows that the legislature by this act

increased the salary of the state auditor without imposing any additional duties upon that office.

Section 31 of article V of the state constitution 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 \* \* \*.”

In discussing an analogous situation in the case of *State v. Granite County Commissioners*, 23 Mont. 250, our supreme court said:

“If it attempted to increase or diminish the rate of compensation for the performance of services which were required of him by the statutes in force when the act was passed, it was to that extent inoperative with respect to a surveyor then in office, because in conflict with the prohibitory provision of the Constitution. In so far, however, as it allowed pay for the discharge of the new duties imposed, the act of 1897 was not obnoxious to the constitutional limitation mentioned. It is a well-settled principle of law that a provision such as is contained in the Constitution of this state, prohibiting any law increasing or diminishing the salary or emolument of a public officer after his election or appointment, does not forbid the allowance of compensation for new and different services exacted from him during his term, where the statute imposing the duties also prescribes the compensation for their performance.”

Since the extra duty of insurance commissioner was part of the duties imposed upon the office of state auditor at the time of the election of the present incumbent, and no new duty was imposed upon said officer at the time the legislature increased the salary of that office, it is my opinion that the said act is contrary to the provision of our state constitution above mentioned, and therefore void as affecting the salary of the state auditor now in office during his present term.

Very truly yours,

L. A. FOOT,  
Attorney General.