

Stenographers—Court Reporters—Salaries.

Under section 8928 R.C.M. 1921 the court stenographer is an officer of the court.

Upon the death of the judge appointing him a court stenographer who continues to occupy his office and stands ready to perform the duties thereof is entitled to the compensation provided by law for such office.

W. E. MacDonald, Esq.,
County Attorney,
Fort Benton, Montana.

April 8, 1927.

My dear Mr. MacDonald:

You have requested my opinion whether the salary of the court stenographer in your judicial district ceased upon the death of the late Judge Tattan.

Section 8928 R. C. M. 1921 reads in part as follows:

"The judge of the district court may appoint a stenographer for such court, who is an officer of the court, and holds his office during the pleasure of the judge appointing him."

It is, of course, obvious that the pleasure of the appointing power cannot be said to continue after his decease. However, in my opinion, this is not the only consideration on which this question should be decided. We have here a situation where a court officer and one whose services are indispensable to the proper functioning of a court of record, continues in the actual possession of an office after the cessation of the will of the appointive power, and, stands ready to continue to exercise the functions and perform the duties of the office.

I can see no reason why the same principles applicable to an elective officer who holds over after the expiration of his term should not in a case of this sort apply to an appointive officer.

The general rule is thus stated in 29 Cyc., p. 1399.

"One who holds over after the expiration of his term, where no provision is made by statute for holding over, is, although not regarded as in most respects a de jure officer, entitled to the salary appended to the office." (Citing: People v. Oulter, 28 Cal. 44; Central v. Sears, 2 Colo. 588; Robb v. Carter, 4 Atl. 282.)

It is therefore my opinion that if the court reporter in your district has continued since the death of Judge Tattan to hold his office and stood ready to perform the duties thereof, he is entitled to the compensation provided by law.

Very truly yours,

L. A. FOOT,
Attorney General.