

Justices of the Peace—Salary—Compensation—Constitutional Law.

Where at the time of the election of a justice of the peace the law fixed his salary at one of two figures, depending upon population of the township, a change in the population of the township after his election changes the salary in conformity with the law and this does not violate Section 31 of Article V of the Montana Constitution.

Dwight N. Mason, Esq.,
County Attorney,
Missoula, Montana.

August 6, 1930.

My dear Mr. Mason:

You state that at the last general election two justices of the peace were elected for a township in your county and that at the time of their election the township had less than 20,000 inhabitants but that the last

United States census taken in 1930 shows the township to contain more than 20,000 inhabitants.

Under Section 4929, R.C.M. 1921, it is provided that justices of the peace in townships having a population of 10,000 people and not exceeding 20,000 people, shall receive a salary of \$1500.00 per annum, whereas, the same officers in townships having a population of more than 20,000 people shall receive a salary of \$2400.00.

You inquire if these justices of the peace may now receive the compensation of \$2400.00 per year or if they are prohibited from receiving more than \$1500.00 per year by Section 31, of Article V of the Montana Constitution, which reads 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; provided, that this shall not be construed to forbid the legislative assembly from fixing the salaries or emoluments of those officers first elected or appointed under this constitution, where such salaries or emoluments are not fixed by this constitution.”

At the time of the election of these justices of the peace, Section 4929, above referred to, was in effect. Said section did not fix the salaries of these justices of the peace at \$1500.00 per year at all events but only during the time that the township had less than 20,000 inhabitants and more than 10,000. The same law provided that when the township should have more than 20,000 inhabitants then the salary of the justice of the peace should be \$2400.00 per year. The salaries of the justices of the peace of this township were fixed either at \$1500.00 per year or \$2400.00 per year by the law in existence at the time of their election, depending upon the fact of population so that no legislation was necessary after their election to entitle them to the \$2400.00 per annum if the township actually contained 20,000 inhabitants or more. The constitutional inhibition is that no law shall increase or diminish the salary of a public officer after his election or appointment. The \$2400.00 would not be paid in this instance by reason of any law passed after the election of these justices of the peace but by virtue of the law that was in effect at the time of their election.

The Supreme Court of California had a somewhat similar situation in the case of *Puterbaugh vs. Wadham* (Cal.), 123 Pac. 804. The court said:

“We think the section could have no application to the change in salary due to the passing of a city, not by legislative act, but by increased population, from one class to another—not a legislative but an automatic change. When petitioner was elected justice of the peace, the statute established his salary at \$2,000 a year because of the population of San Diego; but the same statute fixed the salary of a justice of the peace in a city of the second class, and the evolution of the city into that class did not increase his salary as such—it merely placed him in a new class in which he was entitled to a certain salary which hap-

pened to be in excess of that payable to him when he took the office. The possibility of a change in his status when the city should grow into another class must have been in the contemplation of the officer and of the people who elected him. That this change would operate to increase his salary must also have been within their contemplation, and Section 9 of Article 11 of the Constitution, which was designed to protect taxpayers from legislative interference with their rights by increasing the compensation paid to their elected officers without consent of the electorate, would have no application to such a case as this."

See also *State vs. Hamilton, et al. (Mo.)*, 260 S.W. 466.

The purpose of the foregoing constitutional provision is stated in the case of *State ex rel. Jackson vs. Porter*, 57 Mont. 343, 188 Pac. 375, as follows:

"The purpose is to secure, as far as possible, the independence of each co-ordinate branch of government, and to that end relieve the law-making branch from the importunities of office-holders who might seek increased compensation, not for the office, but for themselves, and what was of infinitely greater consequence, remove from the law-makers the temptation to control the other branches of government by promises of reward in the form of increased compensation or threats of punishment by way of reduced salaries; or, stated differently, the sole purpose of the constitutional limitations is to remove from the sphere of temptation every public officer whose office is created by the Constitution and whose official conduct in the remotest degree might be influenced by the hope of reward or the fear of punishment. So far as there is reason for the rule which underlies the limitations, it must be enforced with the utmost rigor, but whenever the reason for the rule ceases, so does the rule itself."

Under no conceivable circumstances could the purpose and spirit of the constitutional provision in question be violated by the payment to these justices of the salary of \$2400.00 a year under and by virtue of a law that was in existence at the time of their election. The salary fixed by Section 4929 being contingent upon the population of the township, it is evident that the contingency and not a law passed after the election of the justices changes the salary, and this does not violate either the letter or the spirit of the Constitution.

It is therefore my opinion that the constitutional provision under consideration does not prevent these justices of the peace from receiving the salary provided by Section 4929, R.C.M. 1921, for those officers in townships which have 20,000 or more population.

Very truly yours,

L. A. FOOT,
Attorney General.