

February 7, 1933.

You request the opinion of this office on the following questions:

"1. Can a county legally donate county moneys to charitable institutions such as the Montana Children's Home, the Montana Deaconess Home, the Kalispell Ambulance Fund, or other similar organizations, or are such donations prohibited by section 1 of article XIII of the Constitution of the State of Montana?"

"2. Does the law authorize the board of county commissioners to appoint some individual (not a member of the board) to attend a meeting or hearing on their behalf and at the expense of the county, said meeting or hearing being in some city outside of the county? In other words, can the board appoint some outside person to attend a meeting in some other city as their representative or on their behalf and pay the expenses of such persons for attending such meeting, or is the law to the effect that the board must act themselves and that they cannot delegate their powers or duties to another person?"

"3. Can a county officer accept a voluntary cut in salary during his term of office, or is it not only unlawful but also contrary to the constitution to increase or diminish the salary of an officer during his term of office? Would it not virtually be a violation of the Corrupt Practice Act for an officer to take a voluntary reduction of salary a few months before election, and would this not tend to bring about open bidding for an office if the incumbent were to take a voluntary cut of \$15.00 per month and then his opponent might counter with an offer to take a reduction of \$25.00 in salary if elected?"

"4. If a county officer employs some one to do some work for him, should the officer pay the party in cash and then file a claim against the county for reimbursement, or should he require the party to file the claim himself, as provided in section No. 4604 of the Revised Codes? Would this also apply to an investigation by the county attorney in a case where the claim of the individual would expose nothing more than was exposed in the claim of the county attorney?"

Opinion No. 67

Counties — Donations — Charitable Institutions — County Commissioners — Powers — Candidates — Corrupt Practices — Employment of Extra Assistants — Deputies — Emergencies.

HELD: No county may legally donate any money to any charitable institution except such institutions as are under its exclusive control.

The Board of County Commissioners has no valid authority to appoint anyone to attend any meeting for any purpose, at the expense of the county.

The offer of a candidate for public office to serve for a salary less than allowed by statute is merely a proposal that no one is authorized to accept and is in violation of the corrupt practices act.

Except in emergencies which will not admit of delay, the county commissioners must authorize the employment of all extra employees before they can claim compensation; once the authorization is obtained, the official who desires the extra help may choose his employee.

Number 1 is controlled by section 5 of Article X and section 1 of Article XIII of the Constitution of the State of Montana.

The construction placed upon these two provisions of the constitution, considered together, is that no county may legally donate any money to any charitable institution, except such institutions as are under its exclusive control.

Number 2 is controlled by section 1632, R. C. M. 1921, as amended by chapter 176, Laws of 1929, and section 4464, R. C. M. 1921. There is no other provision of the statutes of Montana bearing upon the question submitted and, as you will note, there is no authority anywhere in these two provisions of our statutes authorizing any member of the board to appoint anyone to attend any meeting for any purpose, at the expense of the county. The proper policy and practice laid down for boards of county commissioners in claiming compensation other than is specifically allowed by statute is very ably defined by Justice Sanner in *State v. Story*, 53 Mont. 573.

Number 3: The salaries of county officers are fixed by the legislative assembly and the amount is specifically named in the statute, except that compensation of county surveyors in counties having a voting population of less than 15,000 is on a per diem basis and for the time employed, and the compensation of coroners and public administrators are on a fee basis controlled by statute.

The offer of a candidate for public office to serve for a salary less than allowed by statute is merely a proposal that no one is authorized to accept and is not binding. *Hicks v. Stillwater Co.* 84 Mont. 38.

On March 30, 1932, Attorney General Foot rendered an opinion supported by numerous authorities to the effect that such promises do violate the Corrupt Practices Act and the reasoning of such authorities seems sound and would probably be the rule followed by our Supreme Court. Volume 14, Opinions of the Attorney General, page 279.

Number 4: As a rule the county commissioners must authorize the employment of all extra employees before they can claim compensation from the county and after such employment is authorized by the board of county

commissioners, the official who desires the extra help may choose his employee. The only exception to this rule is in emergencies, where such emergency will not permit of the delay necessary for the board to assemble.