

Opinion No. 329.**Offices and Officers—Civil Office—
Montana Relief Commission—
Legislature.**

HELD: The office of member of the Montana Relief Commission, under the provisions of Chapter 45, Laws of 1933, was a civil office even though the law did not provide for compensation for members of the Commission.

July 16, 1936.

Hon. Elmer Holt
Governor of Montana
The Capitol

You have requested an opinion from this office on the question whether you were holding a civil office while connected with the Montana Relief Commission in 1933-34, prior to the time when the present Montana Relief Commission was created.

In our opinion to you dated February 3, 1936 (Vol. 16, No. 245), as well as in the opinion of the Supreme Court in *State v. Kelsey*, 55 Pac. (2d) 685, 102 Mont. —, five rules for determining the question whether a person is holding a civil office, were stated. While our opinion, as well as that of the court, was based on Chapter 109, Laws of 1935, if the rules there laid down are applied, the same conclusion would have to be reached in regard to the law as it existed prior to the enactment of said Chapter 109. (See Chapters 20 and 56, Laws of 1933-34, Extraordinary Ses-

sion, and Chapter 45, Laws of 1933.) One difference between the law as amended by Chapter 109, Laws of 1935, and as it was prior thereto, is that by Chapter 45, Laws of 1933, the members of the commission were required to serve "without compensation" (Section 1). It seems to be the rule, however, that the receipt of emoluments is not necessary to establish the status of an office (46 C. J. 931, note 30, and cases cited), although the fact that a position carries no salary may be considered.

In *State ex rel. Boyle v. Hall*, 165 Pac. 757, 53 Mont. 595, our Supreme Court said: "While the elements of fixed term and compensation cannot be said to be indispensable to a public office, they are indices the presence of which points to the existence of such a position, and the absence of which indicates to some extent the contrary conclusion."

While our court has not passed on the question directly, it is my opinion, however, that inasmuch as the requirements of all five rules stated by our court in the *Kelsey* case, and prior cases, are met by the law as it existed at the time of your appointment, including taking an official oath and giving an official bond, after January 2, 1934 (Section 5, Chapter 20, Laws of 1933-34, Extraordinary Session), our court would not regard the fact that you did not receive compensation for your services as determinative.