

Opinion No. 29.

Legislature— Membership— Appointment to Position of Civil Nature. Offices and Officers.

HELD: The legislature may not prohibit the appointment of its members to an office or position other than falls within the classification set forth in Article V, Section 7, of the state Constitution.

January 23, 1937.

Honorable S. C. Arnold
 Senator
 Capitol Building
 Helena, Montana

Dear Mr. Arnold:

You have requested an opinion as to whether or not Senate Bill No. _____ is constitutional. Sub-division of this bill reads as follows:

"Section 1. No Senator or Representative shall, during the term for which he shall be elected, be eligible to appointment to any state office, or be given employment, by the state in any of its offices or departments, or with any of its administrative boards, (save and except notaries public or in the state militia) except where the combined salaries and emoluments of the office of Senator or Representative and those of such other appointment or em-

ployment do not exceed the sum of One Thousand Dollars (\$1,000.00) per year. Such disqualification shall continue and be considered in force and effect during the entire term for which any Senator or Representative shall have been elected and a resignation from the office of Senator or Representative shall not be construed or considered to remove such disability. And any person appointed contrary to the provisions of this Act shall not be entitled to collect or receive any salary for services rendered in any office or employment by the state."

Article 5, Section 7 of the State Constitution provides:

"No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of either house during his continuance in office."

This section, in providing that, no senator or representative shall, during his tenure of office, be appointed to any civil office under the state, implies that such persons may hold office under the State, providing those offices are not civil ones.

Article 5, Section 26 prohibits special laws and special legislation, including class legislation.

The obvious and apparent purpose of Article 5, Section 7, among other things, is to restrict the legislature from deliberately and arbitrarily creating positions for their own emolument, and to eliminate the personal motives by such legislation.

Our Supreme Court has defined "civil offices," in *State ex rel Nagle*, v. Page, 98 Mont. 14.

Of course, under the clear definition of civil office, it appears that your bill includes civil offices and additional offices.

Article 5, Section 7 of the constitution created a reasonable classification, applying only to civil positions; and for legislation to go beyond that classification as defined by the constitution would be to create a special class or classification, and without any apparent purpose or reason. It follows that the legislature would be creating

an arbitrary classification of employees and positions, and such classification would not be reasonable. The constitution (Article 5, Section 7) has, by express terms, established a classification, and that classification is "civil positions".

In *State v. State Bank*, 90 Mont. 539, at page 551, the court said:

"A 'special law' which falls within the prohibition of section 26, Article V, above, is defined as one which relates to particular persons or things of a class, or one made for individual cases and for less than a class, or one which relates and applies to particular members of a class, either particularized by express terms of the Act or separated by any method of selection from the whole class to which the law might, but for such limitation, be applicable.

State ex rel. Redman v. Meyers, 65 Mont. 124, 210 Pac. 1064. The prohibition does not extend to a reasonable classification of persons or corporations for regulatory purposes. (*State ex rel. Bray v. Long*, 21 Mont. 26, 62 Pac. 645; *State v. Hammond Packing Co.* 45 Mont. 343, 123 Pac. 407.)"

Such legislation as proposed in your bill would unreasonably restrict the privilege of free employment by the legislators, and would be creating a special law for a particular class of people. As Article 5, Section 7 has specified that only legislators shall be prohibited from holding civil positions under the State, said section, in itself, has established the proper classification, and a further classification as already stated would be unreasonable.

Article 5, Section 7 is prohibitory, as well as mandatory, and would, in itself, without further legislation, prohibit any civil position.

Inasmuch as your bill applies to positions both civil and non-civil, the proposed act is violative of the Constitution of the State of Montana.