

Opinion No. 181.

**Cities and Towns—City Clerk—Salary
in Cities of the Second and
Third Class.**

HELD: If a city clerk in a city of the second class should render services as assistant city engineer there is nothing in Section 5025, R. C. M., 1935, to prevent the city from paying for such services in addition to the maximum salary fixed by the statute for services as city clerk and city engineer.

December 21, 1939.

Hon. W. A. Brown
State Examiner
The Capitol

Dear Mr. Brown:

You have submitted the following:

"We are in receipt of a letter from a city attorney of a second class city in Montana in which he states that the city clerk is being paid an annual salary of \$1,500.00 as such clerk. The city clerk is also employed as assistant city engineer and is paid an additional \$600.00 per year in that capacity. The city attorney further states that in view of the provisions of Section 5025, R. C. M., 1935, he is inclined to the opinion that the maximum compensation which may be made to the city clerk for all services rendered in any capacity is \$1,500.00. He further states, 'As you know, the mayor is sincerely trying to secure a proper management of the city government here and it would certainly help him very much if you could take this matter up with the Attorney General to secure a ruling on Section 5025. This matter will come up at the council meeting to be held on January 2nd, 1940, and a reply to be of assistance must be in our hands by that date.'

"While we know that the Attorney General's office does not hold itself out as being the legal adviser in city affairs, we hope that you will see your way clear to render an opinion in this matter. Such an opinion will also be of assistance to our examiners in determining the legality of expenditures such as indicated."

Section 5025, R. C. M., 1935, provides:

"The annual salary and compensation of the city clerk must be fixed by ordinance, and in cities of the first class must not exceed twenty-four hundred dollars, which is for all services rendered by him in any capacity; in cities of the second class must not exceed fifteen hundred dollars; in cities of the third class must not exceed twelve hundred dollars, which compensation, for cities of the second and third class, includes services rendered by him as city attorney; and in towns must not ex-

ceed three hundred dollars, which includes all services rendered by him in any capacity; provided, however, that nothing in this section shall be held or construed as applying to cities and towns operating under the commission form of government."

It will be noted from a reading of this section that in cities of the first class the salary and compensation of the city clerk must not exceed \$2400, "which is for all services rendered by him in any capacity," whereas, in cities of the second class the salary and compensation of the city clerk must not exceed \$1500, and in the third class must not exceed \$1200, "which compensation for cities of the second and third class includes services rendered by him as city attorney." In cities of the first class the maximum salary is for all services, whereas, in cities of the second and third class the maximum is not for all services but for services as city clerk and city attorney. In towns the maximum salary is \$300.00, and here again we find the same limitation "which includes all services rendered by him in any capacity" that we find in cities of the first class; therefore, should a city clerk in cities of the second and third class render services as assistant engineer there is nothing in the statute to prevent the city from paying for such services. The meaning of the statute seems clear and we do not see how any other meaning can be placed upon it.

Furthermore, whatever reason the legislature may have had for limiting the earnings of a city clerk to \$2400 in cities of the first class, we should hesitate to place a construction upon the statute which would fix a limit on a man's earnings unless it were clear that such was the intent of the legislature.