

Opinion No. 187.

Offices and Officers—Elections—Contests—Salary—Compensation.

HELD: 1. Statutory salary of public official is incident to his title, and one having legal title to an office is entitled to the salary for the period of time he is illegally prevented from performing the duties incident to the office.

2. One who performs the duties of an office under claim of title is entitled to compensation in an amount equal to that provided by statute for such office for services performed.

January 8, 1940.

Mr. Bert I. Packer
Teton County Attorney
Choteau, Montana

My dear Mr. Packer:

You have submitted the inquiry as to the proper compensation to be paid Mr. Peterson made and filed oath facts submitted by you disclose that Mr. Peterson made and filed out oath of office and bond in order to qualify as sheriff of Teton county, December 31, 1938. The bond was approved by the district judge January 26, 1939, and filed January 27, 1939. Mr. Peterson assumed the office of sheriff December 21, 1939, as a result of a final court decision adjudicating an election contest between him and Mr. Billings. Mr. Billings was the predecessor to Mr. Peterson and retained the office and performed all the duties until December 21, 1939.

Mr. Peterson is entitled to the salary of sheriff from the first Monday in January, 1939, for the reason that he held the title from that date. It is immaterial that Mr. Peterson performed no service because the salary is incident to the title. (*Elliott v. Van Delinder*, 247 Pac. 523, 77 Calif. 716; *Peterson v. City of Butte*, 44 Mont. 401.) Mr. Peterson had performed all the conditions on his part to be performed before the first Monday in January, 1939, and is not to be penalized because the district judge did not

approve his bond until a later date. Although the court finally adjudicated the title subsequent to the first Monday in January, 1939, the right then established relates to the first Monday in January in 1939.

Mr. Billings performed the duties of sheriff until December 21, 1939. During such time Mr. Peterson did not and could not perform such duties. If Mr. Billings had not performed such duties it would have been necessary for the county to employ another person to perform the same. Such person would have been entitled to receive compensation for such service at the rate allowed the sheriff. Mr. Billings is entitled to receive compensation for the services he rendered the county from the first Monday in January, 1939, until Mr. Peterson assumed the office on December 21, 1939, in the same amount as though he were actually the sheriff.