

No. 323

**STATE AUDITOR—WARRANTS—MUSIC SUPER-  
VISION—CONSTITUTION—APPROPRIATION**

**Held:** The statute providing for the appointment of a music supervisor in the Department of Public Instruction and fixing the salary therefor is an appropriation made by law, and therefor the state auditor may draw his warrant for such salary, even though no specific appropriation was made by the legislature for such salary.

December 19, 1941.

Mr. John J. Holmes  
State Auditor and Ex Officio  
Commissioner of Insurance  
State House  
Helena, Montana

Dear Mr. Holmes:

You have requested my opinion,

“Whether the State Auditor may draw his warrant covering the salary of Music Supervisor of the Department of Public Instruction without any appropriation, as provided for by Section 34, Article 5, of the State Constitution.”

I am informed provision for the salary of the music supervisor for the second half of the present fiscal year was not made in the Budget of the Superintendent of Public Instruction; and, hence, the appropriation for this department did not include this item.

Section 933 of the Revised Codes of Montana, 1935, as amended by Chapter 149, Laws of 1937, provides for the appointment of a music supervisor at an annual salary of twenty-five hundred dollars.

Section 34 of Article V of the State Constitution provides:

"No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt."

In interpreting this provision of our Constitution, the Supreme Court, in the case of *State ex rel. Rotwitt v. Hickman*, 9 Mont. 370, 23 Pac. 740, held that where the constitution or a statute provides for certain officers and the compensation they shall receive, the compensation specified therein is an appropriation made by law, and no legislative act is necessary. The Court said:

"Where, therefore, it is plainly declared that the secretary of State, or any other officer, shall receive a certain sum as compensation for his services, an appropriation is 'made by law,' and the proper officer is empowered to draw his warrant on the State treasurer in pursuance thereof; . . ."

In the case of *State ex rel. Wade v. Kenney*, 10 Mont. 485, 26 Pac. 197, the relator was appointed Code Commissioner under an act of the Legislative Assembly of 1889, which act set the salary at a certain sum. In issuing the writ to compel the auditor to draw his warrant for such salary, the Court, affirming the decision in the *Rotwitt v. Hickman* case, *supra*, said:

"We have commented heretofore upon the provisions of the Constitution concerning an appropriation, and do not think our views require a repetition of the reasons which control this decision. Under the authorities, the legislation providing for the appointment of a code commissioner is held to appropriate the definite sum which is designed as the compensation of the commissioners."

See also the case of *State ex rel. Buck v. Hickman*; 10 Mont. 497, 26 Pac. 386.

Since the position of music supervisor was created by Section 933, Revised Codes of Montana, 1935, as amended by Chapter 149, Laws of 1937, and the salary fixed therein at a definite sum, an appropriation was made for the payment of such salary.

It is therefore my opinion the State Auditor may legally draw a warrant covering the salary of the music supervisor of the Department of Public Instruction, without offending against the provisions of Section 34, Article V of the State Constitution.

Sincerely yours,

JOHN W. BONNER  
Attorney General