Opinion No. 101.

Constitutional Law—County Officers—Salaries—Increase of Salaries—Justices of the Peace—Constables.

Held Chapter 169, Laws of 1943, is valid and constitutional, and county officers, justices of the peace and constables, either appointed or elected after its effective date, are entitled to the increase of 10% in salaries therein provided.

August 7, 1943.

Mr. E. E. Fenton
County Attorney
Treasure County
Hysham, Montana

Dear Mr. Fenton:

You ask my opinion as follows:

"Is a newly appointed county officer entitled to receive ten per cent salary increase provided by Chapter 169, Laws of 1943, or does that enactment conflict with Section 25, Article V, Constitution of Montana, to such an extent as to render it void?"

The constitutional provision in question reads:

"No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be reenacted and published at length."

As pointed out by you, the salaries of county officers are prescribed by different sections of the codes, and reference must be made to those sections to determine the salary of a particular officer, and it might be argued this fact condemns the chapter, under the following language taken from Northern Pac. Ry. Co. v. Dunham, 108 Mont. 338, 90 Pac. (2nd) 506:

"The test to be applied in determining whether constitutional provision is violated, is whether the amendatory act is independent and complete in itself, requiring no reference to any other statute to determine its meaning and scope. If it is such, it does not conflict with the Constitution. (59 C. J. 868, sec. 454.) If, on the other hand, the Act is not complete in itself but necessitates reference to other statutes which it purports to amend by mingling the new with the old on the same subject, it is condemned by the constitutional provision. (59 C. J. 870; 25 R. C. L. 874, sec. 119)."

It is to be noted many states have constitutional provisions similar to the one in question, and in reading the multitude of cases construing the provision, it is significant most of the courts of last resort have shown a disinclination to insist on strict compliance in cases where the purpose and true extent of the new statute are reasonably clear. It is also significant few statutes, compared to the large number examined by the courts, have been condemned. (67 A. L. R. 566; 4th Decennial Digest Statutes, Section 141.)

The object sought to be attained by the provision of the constitution in question has been stated in King v. Elling, 24 Mont. 470, 478, 62 Pac. 783:

"The object sought to be attained by the prohibition of the Constitution against amendments by reference to the title only of the act to be amended was to remedy a well known evil. Many statutes were amended by merely striking out or adding words or phrases, the amendatory statute giving no intimation of the language of the statute so amended."

Arkansas has a constitutional provision, somewhat similar to the one in question; and—speaking of the intention of the framers of the constitution—the Supreme Court of that state, in Watkins v. Eureka Springs, 49 Ark. 131, 4 S. W. 384, stated:

"It could not have been the intention of the framers of the Constitution to put unreasonable restraints upon the power of legislation, and thus unnecessarily embarass the legislature in its work. . . They meant only to lay a restraint upon legislation where the bill was presented in such form that the legislators could not determine what its provisions were from an inspection of it. . . The language of the provision is so broad that a liberal construction would hamper legislation almost to the extent of prohibiting it."

And, in refusing to apply strictly such a provision, the Supreme Court of Colorado, in Denver Circle R. Co. v. Nestor, 10 Colo. 403, 15 Pac. 714, declared a strict construction would involve not only an absurdity, but also most serious evils, and said:

"Ordinary subjects of legislation are dealt with at every session of the general assembly, and reference to General Statutes is often necessary for the means by which they are to be carried into effect. To reenact and publish at length these various forms and proceedings on the passage of such acts would serve no useful purpose whatever. Take,

for example, an act imposing a tax upon a new subject of taxation; to require the legislature to ingraft on such an act the numerous details of proceeding and forms provided by the revenue laws for the valuation of property, the levy of assessments, and collection of taxes, would be as useless as it would be senseless, expensive and oppressive."

And our Supreme Court in State ex rel. Normile v. Cooney, 100 Mont. 391, 407, 47 Pac. (2nd) 637, has said:

"It was never intended by the Constitution that every law which would effect some previous statute of variant provisions on the same subject should set out the statute or statutes so affected at full length. If this were so, it would be impossible to legislate. The constitutional provision reaches those cases where the Act is strictly amendatory or revisory in character. Its prohibition is directed against the practice of amending or revising laws by additions, or other alterations, which without the presence of the original are usually unintelligible. If a law is in itself complete and intelligible, and original in form, it does not fall within the meaning and spirit of the Constitution."

Now, referring to Chapter 169, Laws of 1943, it is seen the title is clear and explicit:

"An Act to Increase the Salaries of All Elective County Officers, Including Justices of the Peace and Constables; Reciting the Need of such Increased Salaries, Declaring an Emergency for a Certain Time."

And the body of the Chapter, after declaring the emergency, is likewise clear and explicit.

"The salaries of all elective county officers, including justices of the peace and constables, as now prescribed by law are hereby increased ten per cent (10%) until March 1, 1945."

I do not believe it can be rightfully claimed in view of the plain language used in the title and the body of the act, the evil referred to in King v. Elling, supra, is present in the chapter; or that it can be said the chapter is unintelligible without the presense of the different sections of the code, fixing salaries, as it is stated in unambiguous langauge that salaries, as now prescribed by law, are increased ten per cent until March 1, 1945; the chapter merely providing the officer shall receive his present salary, plus a ten per cent increase.

True, in order to determine the exact salary to which an officer is entitled, reference must be made to other sections of the code but the fact reference must be had to other statute is not sufficient to condemn the act—as pointed out in State ex rel. Berthot v. Gallatin County High School, 102 Mont. 356, 366, 58 Pac. (2nd) 264.

Re Estate of Estelle Hunter, 97 Colo. 279, 49 Pac. (2nd) 1009, bears some resemblance to the facts here considered. The Court had under consideration "An Act to provide funds for the payment of old age pensions and for the assistance of aged, indigent persons," it being provided:

"In. addition to all other fees, charges, impositions now fixed by law and collected by the Governmental Department . . . following fees, charges, sums and impositions and sums are to be used for the purposes of this Act and not otherwise . . . (c) ten per cent additional upon the amount of any tax payable under the provisions of the inheritance tax laws of this State."

It was contended the Act violated a provision of the Colorado constitution similar to the provision we are here considering, but this contention was rejected by the Supreme Court of that state.

While the matter is not free from doubt, we must keep in mind the rule of construction of a statute is presumed to be constitutional and all doubts will be resolved in favor of it validity, the following quotation from State ex rel. Berthot v. Gallatin County High School, 102 Mont. 356, 366, 58 Pac. (2nd) 264, showing our duty to uphold, rather than condemn a statute:

"In the determination of the question (constitutionality), a statute, if possible, will be construed so as to render it valid. (Hale v. County Treasurer, 82 Mont. 98, 105, 265 Pac.

6). It is presumed to be constitutional, and all doubts will be resolved in favor of its validity if it is pissible so to do. (State ex rel. Toomey v. State Board of Examiners, 74 Mont. 1, 238 Pac. 316, 320.) The invalidity of a statute must be shown beyond a reasonable doubt before the court will declare it to be unconstitutional. (Herrin v. Erickson, 90 Mont. 259, 2 Pac. (2d) 296.) And a statute will not be held unconstitutional unless its violation of the fundamental law is clear and palpable. (Hill v. Rae, 51 Mont. 378, 158 Pac. 826.)

And in reference to this matter our duty to hold the chapter constitutional is made more imperative by the statement appearing in Adami v. Lewis and Clark County, 138 Pac. (2nd) 969 as follows:

"On the other hand, it is apparent that the constitutional provision does not forbid the application of Chapter 169 to an officer whose election or appointment occurs after the effective date of the Act, and that as to him Chapter 169 is valid."

The writer recognizes the fact the Supreme Court was not considering the constitutional provision here under examination, and was referring to Section 31, Article V; but until such time as the Supreme Court, by a direct proceeding, overrules this statement, there is no alternative for this office other than to hold the chapter constitutional.

It is, therefore, my opinion Chapter 169, Laws of 1943, is constitutional and valid, and county officers, justices of the peace and constables, either appointed or elected after its effective date, i. e., March 4th, 1943, are entitled to the increase of ten per cent in salaries therein provided.

Sincerely yours,
R. V. BOTTOMLY
Attorney General