

**Opinion No. 131.****Counties—Officers' Salaries.**

**Held:** County commissioners are justified in rejecting claim for difference in statutory pay and actual pay, when claim is not presented for nine years after completion of services.

September 23, 1943.

Mr. Elmer Wang, Chairman  
Board of County Commissioners  
Fallon County  
Baker, Montana

Dear Mr. Wang:

A claim has been presented to your county, purporting to cover shortages in salary as deputy county assessor, it being claimed the statutory salary was \$137.50 per month and only \$100.00 per month had been paid. Services were rendered between December 8, 1932, and October 1, 1934, and the claim was just recently presented.

You ask my opinion as to the legality of the claim, enclosing with your request a copy of the opinion your county attorney wrote to the effect the claim is illegal and should be disallowed.

It is to be noted that Section 4605, Revised Codes of Montana, 1935, provides every claim against the county must be presented within a year after the last item accrued. That there is grave doubt this section applies to a claim of salary is apparent from the following statement taken from an Idaho decision, and quoted with approval by our Supreme Court in *Weir v. Silver Bow County*, 124 Pac. (2nd) 1003:

"The phrase 'claim against the county,' as used in the above statutes, applies only where there is something for the commissioners to pass upon, involving the exercise of discretion on their part; that is to say where, under certain circumstances, they might be justified in rejecting the claim. It does not apply to a case

where the liability and its extent are so clearly fixed by positive provisions of the statutory law that the question becomes purely one of law, leaving nothing for the commissioners to pass upon, and no room for the exercise of discretion. . ."

Reference is also made to the case of *Hicks v. Stillwater County*, 84 Mont. 38, 274 Pac. 291, in which the county surveyor presented his claim against the county for difference in statutory per diem and the amount actually allowed, and covering a period more than one year before the presentation of the claim. At page 51 of the state report, the Supreme Court refused to pass on the question of the statutes of limitation until raised by answer.

However, it is to be noted the last services performed by the claimant were on October 1, 1934, almost nine years ago, and it would appear, irrespective of the application of Section 4605, Revised Codes of Montana, 1935, that the claim is barred by the general statutes of limitation and particularly any one of the following:

Section 9030, Revised Codes of Montana, 1935, providing a five year limitation to institute action on causes on contract, account, promise, not founded on an instrument in writing.

Section 9031, Revised Codes of Montana, 1935, providing within three years, upon an obligation or liability not founded upon an instrument in writing, other than contract, account, or promise.

Section 9033, Revised Codes of Montana, 1935, providing within two years, upon a liability created by statute other than a penalty or forfeiture.

Section 9041, Revised Codes of Montana, 1935, providing within five years, for relief not provided in other sections of the code.

It is to be noted in the case of *Weir v. Silver Bow County*, 124 Pac. (2nd) 1003, the Supreme Court recognized the right of the board of county commissioners to stipulate the statutes of limitation did not apply.

In view of the length of time that has elapsed since the last services were performed, it is my opinion the board of county commissioners is legally justified in following the county attorney's opinion and rejecting the claim.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General