

Dear Mr. Roe:

I have your letter of March 20, 1943, in which you request my opinion regarding House Bills No. 34 and 119 of the Twenty-eighth Legislative Assembly.

Questions two and four submitted by you concern themselves with House Bill No. 119, Chapter 169, Laws of 1943. Under these numbers you ask whether House Bill No. 119 is constitutional, and providing House Bill No. 119 is constitutional is the increase to ninety per cent of the officer's salary, granted by House Bill No. 34, limited to salaries of the officers as of February 25, 1943, or would it be ninety per cent of the salaries of the officers on March 4, 1943, when House Bill No. 119 became a law. This office feels no opinion can be expressed at this time in regard to House Bill 119 for the reason the constitutionality of the act has been questioned, and is now being litigated in the District Court of Lewis and Clark County, in the case of Will Whalen, Taxpayer v. Board of County Commissioners of Lewis and Clark County, Montana, et al., Case No. 19111.

Your first question is as follows:

"A. If House Bill Number 34 is constitutional,

"(1) Are the salaries of deputies and assistants employed by officers prior to February 25, 1943, included within this bill, or is this bill limited to deputies and assistants employed by officers after February 25, 1943?"

Your first question is answered by Opinion No. 19, Report and Official Opinions of the Attorney General, Volume 20, rendered under date of March 15, 1943, a copy of which is herewith enclosed. It was there held the date of the appointment was the deciding factor in considering whether or not the provisions of Section 31, Article V, Montana Constitution, applied to the deputy county assessor in question. It is my opinion the date of the appointment of the deputy or assistant is the deciding factor in considering whether such deputy or assistant is entitled to the increase in salary allowed by Chapter 87, Laws of 1943. If the appointment of the deputy or assistant was made after February 25, 1943, the effective date of Chapter 87, Laws of 1943, the deputy or assistant is entitled to the

#### Opinion No. 26.

#### Counties—County Commissioners—Deputies and Assistants—Salary, Increase of—Emergency Warrants.

Held: The date of the appointment is the deciding factor in considering whether or not the provisions of Section 31, Article V, Montana Constitution, prohibit or allow the increase in salary as provided by Chapter 87, Laws of 1943 to deputies and assistants. Under the facts given, the board of county commissioners must declare a public emergency and issue emergency warrants if they determine to allow the increase in salary as provided by Chapter 87, Laws of 1943.

March 27, 1943.

Mr. Frank J. Roe  
County Attorney  
Silver Bow County  
Butte, Montana

benefits of the act. If the appointment was made prior to February 25, 1943, it is my opinion the constitutional prohibition in Section 31, Article V of the Montana Constitution forbids the increase in salary. In answer to your first question, then, the benefits of House Bill No. 34, Chapter 87, Laws of 1943, are limited by the constitution to deputies and assistants employed by officers after February 25, 1943.

Your third question is:

"(3) If the county at the present time has assessed the full levy allowed by law; the total revenue has been budgeted and there is no surplus, then what procedure would the commissioners follow in providing for raises or increases in the salaries of the officers, and the increase in the salaries of the deputies or assistants? Should they declare an emergency, or merely proceed to issue warrants for the same?"

If the board of county commissioners determines to allow the increase in salary to those deputies and assistants appointed after February 25, 1943, then, it is my opinion, under the facts stated in your third question, there is no other alternative than the declaration of a public emergency and the issuing of emergency warrants in accordance with the provisions of Section 4613.6, Revised Codes of Montana, 1935.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General