

Opinion No. 123.

**Offices and Officers—County Officers
County Auditor—Board of County
Commissioners—Compensation—
Salary.**

Held: 1. The office of county auditor was not abolished by enactment of Chapter 150, Laws of 1945.

2. Since no compensation is now provided by general or special law for the county auditor, the board of county commissioners has jurisdiction and power—under such limitations and restrictions as are prescribed by law—to fix the compensation of the county auditor and to provide for the payment of such compensation.

February 15, 1946.

Mr. H. R. Eickemeyer
County Attorney
Cascade County
Great Falls, Montana

Dear Mr. Eickemeyer:

You have inquired whether Chapter 150, Laws of 1945, abolishes the office of county auditor and, if it does not, how the county auditor is to be compensated for his services.

Chapter 150, Laws of 1945, relates to the salaries of certain county officers and sets forth the procedure fixing and determining the salaries of county attorneys, sheriffs, assessors, clerks, treasurers, clerks of court, and superintendents of schools. One of the

sections specifically repealed by Chapter 150 is Section 4867, Revised Codes of Montana, 1935, which provided the annual compensation of certain county officers including county auditors in counties of the first, second, third, and fourth class. Hence there can be no doubt the salary provisions contained in Section 4867 relating to county auditors were repealed by Chapter 150.

But does the omission from Chapter 150 of salary provisions for county auditor abolish that office?

I think not. The office of county auditor is established by and the duties thereof are enumerated in Sections 4824 through 4834, Revised Codes of Montana, 1935. Those sections have not been specifically repealed by our legislative assembly. It is elementary that repeals by implication are not favored by the courts. (State ex rel Dunn v. Ayers, 112 Mont. 120, 127, 113 Pac. (2d) 785, and many others). Nowhere in Chapter 150, Laws of 1945, is the office of county auditor even mentioned. To say Chapter 150 effected repeal of eleven sections of the Montana Code which establish and set forth the duties of the office of county auditor would be absurd. Therefore I agree with your conclusion the office of county auditor is not abolished by reason of the legislature's failure to include in the provisions of Chapter 150 procedure for determining the county auditor's salary.

How then is the county auditor's salary to be determined?

Section 4465.17, Revised Codes of Montana, 1935, provides:

"The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To fix the compensation of all county officers not otherwise in this code or by general or special law fixed, and provide for the payment of the same."

Since Chapter 150, Laws of 1945, repealed Section 4867, Revised Codes of Montana, 1935, which fixed the salaries of county auditors, the county auditor is now an officer whose compensation is "not otherwise in this code or by general or special law fixed."

I therefore agree with your conclusions:

(1) The office of county auditor was not abolished by enactment of Chapter 150, Laws of 1945.

(2) Since no compensation is now provided by general or special law for the county auditor, the board of county commissioners has jurisdiction and power—under such limitations and restrictions as are prescribed by law—to fix the compensation of the county auditor, budget for the same and to provide for the payment of such compensation.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General