

July 3, 1945.

Mr. George P. Porter
 State Treasurer
 State Capitol
 Helena, Montana

Dear Mr. Porter:

You have submitted the following:

"I should like your opinion as soon as possible upon the following questions:

"Having had many years of experience under our constitutional government, I can find nothing in the constitution that gives any one constitutional officer power over another constitutional officer. Therefore, I should like to have you answer this question. Chapter 30, page 37 of the 1943 Session Laws, by a legislative act, gives certain powers to the board of examiners. Do you believe that Chapter 37 refers to constitutional offices and officers? If it refers to constitutional officers do you believe Chapter 30, page 37 is constitutional?"

Chapter 30, Laws of 1943, insofar as pertinent to your inquiry reads as follows:

"The state board of examiners of the State of Montana shall by resolution fix and determine the number, compensation, terms and tenure of office of all assistants, deputies, agents, attorneys, stenographers and executive attaches of all civil executive state offices, boards, commissions, bureaus and departments of the State of Montana."

The language used in paragraph one seems to answer the first question under your inquiry, in that it pertains to the number, compensation, term and tenure of employees of civil executive state offices.

Chapter 30, supra, makes no mention as to any of the officers enumerated under the provisions of Section 1, Article VII, of the Constitution of the State of Montana, such as Governor, Secretary of State, State Treasurer, Attorney General, and the like. Section 1 of said Chapter 30, Laws of 1943, requires the State Board of Examiners to fix the number, compensation, term and tenure of the employees of all civil executive state offices, boards, com-

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Board of Examiners, control over employees of states offices and departments—Compensation and Tenure, civil executive state offices—Employees, compensation and tenure—Deputies and Assistants, compensation, term and tenure.

Held: Chapter 30, Laws of 1943, does not relate to the constitutional officers of the executive department of the state, such as are enumerated in Section 1, Article VII, of the Montana Constitution, but relates to the employment of assistants, deputies, agents, attorneys, administrators, engineers, experts, clerks, accountants, stenographers and executive attaches of all civil executive state offices, boards, commissions, bureaus and departments of the state of Montana.

missions and bureaus of the executive department of the state. By Section 2 of the act, executive state offices, boards, commissions, bureaus, and departments are authorized to appoint and discontinue the services of any of said employees, as in said section designated.

By analogy, the board of county commissioners of a county is vested with a similar duty to fix the compensation and the number of deputies, assistants and the like employed by a county.

Chapter 30, Laws of 1943, is not necessarily new legislation for similar statutes have been enacted. In 1921 the legislature enacted Chapter 108, Laws of 1921, which was the law until amended by Chapter 176, Laws of 1931, appearing in the Revised Codes of Montana, 1935, as Sections 273 and 275, which have been the law for many years. However, said sections were repealed by Chapter 5, Laws of 1937, which was in force until its repeal by the enactment of Chapter 30, supra.

By the enactment of Chapter 5, Laws of 1937, the Board of Examiners was relieved of such duty under the provisions of Sections 273 and 275 and vested the duty in the Governor.

A perusal of Sections 273 and 275, Revised Codes of Montana, 1935, and a comparison thereof with the provisions of said Chapter 30 will disclose striking similarities as to phraseology and subject matter.

It is apparent by the repeal of Chapter 5, Laws of 1937, the Twenty-eighth Legislative Assembly deemed it wise and expedient to relieve the supreme executive of the state of the powers and duties vested in him under the provisions of said Chapter 5, supra, and transferred or reinvested the same in the State Board of Examiners along the lines similar to those expressed in Sections 273 and 275, supra.

As to the constitutionality of said Chapter 30, Laws of 1943, I believe the same to be constitutional. The power of fixing the number, compensation, term and tenure of employees of the civil executive offices, boards, commissions, bureaus and departments of the state must of necessity be vested in some state department. And, inasmuch as all of the employees of the civil executive offices, boards, commissions, bureaus and departments referred to in said Chapter 30, supra, are within the executive department of the state,

it would appear the State Board of Examiners is the proper one to exercise the authority under legislative enactment. Certainly the power could not be vested in the Supreme Court, the **Judicial department** of the state. If such were the case, the law would be unconstitutional. One department of the government may not usurp the powers of another. The function of the judiciary is to give effect to the legal acts of the other two departments of government, and not supervise them. (*Myrick v. Peet*, 56 Mont. 13, 180 Pac. 574.) Change in the law is for the legislature, and the courts should not add to, subtract from, or amplify the terms of a statute. (*State v. Walker*, 64 Mont. 215, 210 Pac. 90; *Fergus Motor Co. v. Sorenson*, 73 Mont. 122, 235 Pac. 422.) It is the court's duty to interpret, and not make, laws. (*State v. Reed*, 65 Mont. 51, 210 Pac. 756.)

The constitutionality of a statute is prima facie presumed, and every intendment is in favor of upholding it until it appears unconstitutional beyond a reasonable doubt. (*State ex rel. Toomey v. State Board of Examiners*, 75 Mont. 1, 238 Pac. 316.)

As the fundamental purpose of construing a constitutional provision is to give effect to the intent of its framers, and the people who adopted it, its construction should not be technical but liberal. (*State ex rel. Toomey v. State Board of Examiners*, supra.)

It is therefore my opinion Chapter 30, Laws of 1943, does not relate to the constitutional officers of the executive department of the state, such as are enumerated in Section 1, Article VII, of the Montana Constitution, but relates to the employment of assistants, deputies, agents, attorneys, administrators, engineers, experts, clerks, accountants, stenographers and executive attaches of all civil executive state offices, boards, commissions, bureaus and departments of the state of Montana.

We must take the law as the legislature has given it to us and it is therefore my further opinion that Chapter 30, Laws of 1943, is constitutional.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General