

Opinion No. 80.

Salaries of County Officers—County Commissioners—County Attorney—Increase of Salaries—Appointment of County Officers.

Held: The salaries fixed and specified in Chapter 150, Laws of 1945, will not take effect until the duly qualified and elected official has taken office for the term for which he was elected, subsequent to the fixing of such salary by the board of county commissioners in September of the election year for that particular office.

October 17, 1945

Mr. Paul J. Murphy
County Attorney
Judith Basin County
Stanford, Montana

Dear Mr. Murphy:

You have asked for my opinion and interpretation of Chapter 150, Laws of 1945, as to whether the salaries specified therein apply to a person appointed to fill a vacancy in a county office since the passage and approval of said act. The pertinent part of said act is Section 5 of Chapter 150, Laws of 1945, which reads as follows:

"In September of any year in which the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, county attorney, or clerk of the district court is to be elected, the county commissioners shall, by resolution, fix the salaries of the officials to be elected in conformity with the schedule in Section 1, based on the population as shown in the last decennial federal census and on the taxable valuation of the county at the time the salaries are fixed. Salaries so fixed shall apply during the entire term for which the foregoing officials are elected and should a vacancy occur, the person appointed or elected to fill the unexpired term in the office vacated shall receive the same salary as the person vacating the office." (Emphasis mine.)

This section specifies that the salary of the county attorney, among other county officials, is to be fixed by the

county commissioners in September of any year in which the particular official is to be elected. Your predecessor's term not expiring until the first Monday in January of 1947, and his election having preceded the enactment of this act, there could be no fixing of the new salary so provided in this act until September, 1946, or the next election year. Such increase would not take effect until the newly elected official takes office. The fact that a vacancy has occurred in one of the specified offices subsequent to the enactment of this act does not entitle the newly appointed office holder to the increase until the county commissioners have fixed the increase as so specified. Such fixed increase is to be established for the official in question in the month of September of the year in which that particular official is to be elected, the next regularly elected office holder thus being the first to benefit under the provisions of this act.

It is to be noted that Chapter 150, Laws of 1945, repeals Section 4867, Revised Codes of Montana, 1935, among others, and provides for increased salaries of certain county officials.

The language of the act is plain and unambiguous and needs no interpretation. The time for fixing the increase specified in the act has been clearly set forth by the legislature.

"The fundamental rule of construction is to ascertain and give effect to the intention of the legislature as expressed in the statute." (State v. Board of Commissioners of Cascade County, 89 Mont. 37, 296 Pac. 1.)

You have cited State ex rel. Jackson, Relator, v. Porter, State Auditor, Respondent, 57 Mont. 343, as an authority for your eligibility for the increase provided in the act. In that case the amended act became effective in March, 1919, and the appointed successor took office the following October.

The above case is not pertinent to the present facts in that the raise as provided for in Chapter 150, Laws of 1945, does not take effect on the date of passage. This act specifically states that such increases are not to take effect until fixed by the county commissioners in September of any year

in which the concerned public official is to be elected. There can be no other construction as to the time when such raise is fixed in construing Chapter 150, Laws of 1945.

It is therefore my opinion that the salaries fixed and specified in Chapter 150, Laws of 1945, will not take effect until the duly qualified and elected official has taken office for the term for which he was elected, subsequent to the fixing of such salary by the board of county commissioners in September of the election year for that particular office.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General