

annual salary from \$3,024.00 to \$3,072.00, under and by virtue of the provisions of Chapter 150 of the Session Laws of the 29th Legislative Assembly, for the year 1945, when the conditions set forth in said Chapter 150 are satisfied so as to increase her salary to that amount, where she is not a newly elected officer but a holdover from 1947.

2. If the County Treasurer's salary may not be raised because of the fact that it would constitute an illegal increase in pay during the term of office for which she was elected; may the Clerk of the District Court, whose term of office begins in 1949, receive an increase in pay in view of the provisions of the 1947 Session Laws, which state that his salary shall be the same as that of the County Treasurer?
3. May the County Attorney, whose term of office begins in 1949, but whose salary is set at \$300.00 less than that received by the County Treasurer, receive an increase in pay under the circumstances and conditions set forth in Question 2?"

In answering your first question, reference must be made to Section 31 of Article V of the Constitution of the State of Montana which states:

"Except as otherwise provided in this constitution no law shall extend the term of any public officer, or increase or diminish his salary or emolument after his election or appointment; . . ."

Construing this section of our state constitution, the Supreme Court of Montana in **Poorman v. State Board of Equalization**, 99 M. 453, 45 2nd 310, said:

"Here we have a direct restriction upon the otherwise plenary power of the legislative department in this regard, which is all-inclusive, and renders all other prohibitions in the Constitution con-

#### Opinion No. 152

#### Salaries, County Treasurer, County Attorney and Clerk of the Court.

**Held:** "The County Treasurer cannot obtain an increase in salary as provided for by Chapter 150 of the 1945 Session Laws during the present term of office. The newly-elected county attorney and clerk of the district court must have their salaries set with reference to the method laid down in Chapter 150 to correspond with the salary which would have been paid to the county treasurer if said treasurer had also been elected this year."

Mr. Melvin E. Magnuson  
County Attorney  
Lewis and Clark County  
Helena, Montana

Dear Mr. Magnuson:

You have submitted the following questions to me for my opinion.

- "1. May the County Treasurer of Lewis and Clark County receive an increase in her

tained mere surplusage, as there is nothing 'otherwise provided' in the Constitution which is now effective."

and again, this Court stated in the same case that the definition of a public officer:

"is sufficient to include all individuals who hold public office either by election or appointment, for a definite period, great or small, and whether such office be state, county, or municipal."

Since this section of the constitution is still in force, and since it definitely applies to a county treasurer who seeks a salary increase during her term of office, it is my opinion that the County Treasurer of Lewis and Clark County cannot obtain an increase in her salary caused by the change in salary affected by virtue of Chapter 150 during her present term of office.

Your second and third questions must be answered by reference to Section 5, Chapter 150 of the 1945 Session Laws. This section provides that:

"In September of any year in which the . . . 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." (Emphasis supplied)

While it would seem that the salaries paid to the clerk of the district court and to the county attorney must be ascertained by reference to the salary paid to the county treasurer, this cannot be done where the county treasurer is not elected at the same time at which these other two county officials are elected. If such a strict interpretation of this statute were followed, it would mean that the county attorney and the clerk of the district court, even though the population and taxable valuation has increased, would have to accept a salary lower than that based upon the sched-

ule in Section 1, Chapter 150 of the 1945 Session Laws. This would be true although the higher salary could easily be fixed by the county commissioners in conformity with the law.

Definitely applicable are the words of the case of *State ex rel Jaumotte v. Zimmerman et al.*, 105 Mont. 464, 73 Pac. 2nd 548, which states:

"When these . . . (County officers) . . . were candidates for their respective offices, they were charged with the knowledge that their salaries might be the same, more, or even less than their predecessors were receiving. By virtue of the existing statute, plaintiffs took office subject to the contingency that, by operation of law, their salaries might be reduced or increased, depending entirely upon the assessed valuation of the property in the county." (page 475)

It is obvious from a study of Chapter 150 of the 1945 Session Laws that the legislature intended the salaries of all county officials should increase or decrease as the population and assessed valuation increased or decreased. This is borne out by the fact that the legislature, bearing in mind that the county treasurer is not elected each time the county attorney or the clerk of the district court is elected, provided that the county commissioners should fix in September the salary of the official to be elected that year.

It should be pointed out that Section 4 of Chapter 150, Laws of 1945, was amended by Chapter 91, Laws of 1947, making the salary of the Clerk of the District Court the same as that paid to the county treasurer. However, the direct increase could not be effected until the term commencing the first Monday of January, 1949, when a new term in the clerk of the district court's office commences. (Section 31, Article v. Constitution of Montana.)

With the beginning of the term in 1949, the clerk of the district court is entitled to the salary which the county treasurer receives, together with any increase or decrease resulting from the fixing of salaries by the

board of county commissioners acting under Section 5, Chapter 150, Laws of 1945. The treasurer does not receive such increase or decrease, for Section 5, supra, provides for fixing of salaries "of the officials to be elected." The treasurer's term has in excess of two years to run, at this time.

One of the cardinal rules in the interpretation of legislation is that the proper determination must carry out the intention of the legislature. In the recent case of *The State of Montana v. Holmes*, 114 Mont. 372, 136 Pac. 2nd 220, quoting an earlier Montana case, it is said:

"When the intention of the legislature can be ascertained from the statute, words may be modified, altered, or supplied so as to compel conformity of the statute to that intention. . . ." (page 376)

and again, this case held:

"words or phrases which, if given effect, might defeat the manifest purpose of the statute, will be eliminated or regarded as surplusage." (page 376)

The intention of the legislature must be carried out, and, to do so, it is my opinion that the salary of the county attorney and the salary of the clerk of the district court, who were elected in November of 1948, must be set by the method laid down in Chapter 150 already cited with reference to the salary which would have been paid to the county treasurer if said treasurer had been elected this year.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General