

Opinion No. 79**County Treasurer, Special Compensation—Special Compensation, County Treasurer—Duties, County Treasurer.**

Held: The claim of a county treasurer for special compensation for performing the duties required under Chapter 298, Laws of 1947 is unauthorized by legislative act and therefore should be denied.

November 13, 1947

State Board of Equalization,
Capitol Building
Helena, Montana

Gentlemen:

You have requested my opinion on the following question:

“Is a county treasurer entitled to special compensation for performing the duties required under Chapter 298, Laws of 1947?”

There is no specific provision in said Act which authorizes either the county treasurer or any other officer additional compensation for performing the duties required by said Act. The portion of said Act pertaining to the duties is as follows:

“For the convenience of purchasers and users of such use tax stamps, the state board of equalization may deposit such stamps with the county treasurer of any county,

and it shall be the duty of the county treasurer to accept payment for said stamps and remit therefor to the state board of equalization at intervals fixed by said board, or at any time on demand of said board, and the county treasurer shall at all times be liable to the state board of equalization for the value of any such stamps so deposited with him. . . . The state board of equalization, or any authorized representative thereof, the county treasurer in any county of this state, the sheriff (including under sheriff and deputies), and county attorney of any county in this state shall enforce the provisions of this Act.”

With reference to compensation for enforcement of the Act, it is provided as follows:

“There shall be paid, on claims regularly presented against the state, and approved by the state board of examiners, the costs of enforcing and the expenses of administering the provisions of this Act.”

It is sometimes overlooked that a county is created for the convenience of the state's administration and that it is not an independent government, separate and part from the state.

A county is created by the legislature, as a subdivision of the state in order to decentralize government, to administer and enforce locally the laws of the state and county.

Although a county official is elected to office from a particular county and serves therein, nevertheless his duties are performed on behalf of the state, as well as his county.

Under the provisions of Article V, Section 31, Montana Constitution, the salary or emolument of an officer may not be increased or decreased during the term of office for which he was elected.

While a distinction exists between a salary, which has been defined to be a fixed compensation, decreed by authority, for performance of duties without regard to the amount of services rendered, and fees which have been defined to pertain to those irregular and uncertain modes of compensation for public service, the Su-

preme Court of Montana has determined that a public officer may not demand pay, based upon a quantum meruit basis for additional services where there is no express provision in the law therefor.

The following excerpts from opinions of the Supreme Court of Montana appear to determine fully that the claim of the county treasurer of Valley County is without merit:

"It is competent for the legislature to exact extra duties of a public officer without providing compensation for them; but it is nonetheless incumbent upon the officer to perform the duties so prescribed."

State ex rel. Rowe v. District Court, 44 Mont. 318, 323.

"The right of a public officer to compensation for the performance of duties imposed upon him by law does not rest upon contract, but is incident to the right to hold office; and, unless compensation is allowed by law, he may not lawfully demand payment as upon a quantum meruit for services rendered."

McGillic v. Corby, et al, 37 Mont. 249, 254

"The general rule of law is that public officials can only claim compensation for services rendered where the compensation is provided by law, and that where no compensation is so provided the rendition of such services is deemed to be gratuitous. (29 C. J. 572, 46 C. J. 1014.) Statutes relating to the fees or compensation of public officers must be strictly construed in favor of the government, and such officers are only entitled to what is clearly given by law."

State ex rel. Matson v. O'Heren, 104 Mont. 126, 142

(Quoting with approval Evans v. City of Trenton, 24 N.J.L. 764):

"It is a well-settled rule that a person accepting a public office with a fixed salary is bound to perform the duties of the office. He cannot legally claim additional compensation for the discharge of these duties even though the salary may be a very inadequate compensation for

the services. Nor does it alter the case that, by subsequent statutes or ordinances, his duties are increased, and not his salary. His undertaking is to perform the duties of his office, whatever they may be, from time to time during his continuance in office, for the compensation stipulated, whether those duties are diminished or increased. Whenever he considers the compensation inadequate, he is at liberty to resign. . . This rule is of importance to the public. The successful effort to obtain public office is not unfrequently speedily followed by efforts to increase emoluments, while the incessant changes which the progressive spirit of the times is introducing effects, almost every year, changes in the character and additions to the amount of duty in almost every official station; and to allow these additions and changes to lay the foundation of claims for extra services would soon introduce intolerable mischief."

Territory v. Carson, 7 Mont. 417, 427 (1888).

"We have no difficulty in giving assent to the rule that, when a public officer claims compensation for the performance of duties appertaining to his office, either by way of fees or salary, he must be able to support his claim by pointing to some provision of law authorizing him to demand it."

Peterson v. City of Butte, 44 Mont. 401, 407

"When the law provides no extra compensation, is in this case, he is not entitled to any. He must nevertheless perform the duty just as promptly and efficiently. He must not be permitted to evade or shirk his duty in the least, however unpleasant and onerous it may be. If he does not care to perform the duties of his office for the compensation fixed by law, he is not compelled to retain it. Someone else can be found to take his place."

State v. Supple, 22 Mont. 184, 188

In addition thereto, it is expressly provided in part by Section 4864, Re-

vised Codes of Montana, 1935, as follows:

"No county officer shall receive for his own use, any fees, penalties or emoluments of any kind, except the salary as provided by law, for any official service rendered by him."

We must take the law as the legislature has given it to us, and based upon the foregoing law and the Supreme Court decisions, it is my opinion that the claim of the county treasurer of Valley County is unauthorized by legislative act and therefore should be denied.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General