

Opinion No. 8

County Officers—Salaries—Clerk of
Court—Fees, Clerk of Court.

Held: That any increase of salary for the Clerk of Court by way of a straight raise in the salary or by allowing clerks of court to retain certain fees which they now collect and cover into the general fund of the county, would be unconstitutional under Section 31 of Article V as interpreted by our Supreme Court, for those officers elected or appointed prior to its effective date.

January 15, 1947.

Honorable C. J. Williams
State Capitol Building
Helena, Montana

Dear Mr. Williams:

You have asked me whether or not this legislature could enact a law raising the salary of the elected county officers and such raise become effective immediately so the present county officers would be entitled thereto.

Also, whether or not fees collected by the Clerk of Court could be added to their present salary by legislation.

In considering your question it should be pointed out that Section 31

of Article V of our Constitution provides in part:

" . . . 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."

Section 4864, Revised Codes of Montana, 1935, provides:

"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, but all fees, penalties and emoluments of every kind must be collected by him for the sole use of the county and must be accounted for and paid to the county treasurer as provided by section 4887 of this code and shall be credited to the general fund of the county."

Section 4887, Revised Codes of Montana, 1935, provides:

"All salaried officers of the several counties must charge and collect for the use of their respective counties, and pay into the county treasury on the first Monday of each month, all the fees now or hereafter allowed by law, paid or chargeable in all cases, except as provided in section 9811 of the Code of Civil Procedure, provided, however, that nothing in this section shall be held to apply to the compensation received by the sheriff as mileage while in the performance of official duties, or for the board of prisoners or other persons while in his custody."

In the case of *Adami v. County of Lewis and Clark* our Supreme Court had under consideration Chapter 169 of the Laws of 1943, which, as you will recall, provided to raise the salaries of county officers ten per cent. The Court stated:

"The learned district judge before whom the (case was tried), held that Chapter 169 was unconstitutional as to county officers' terms which resulted from election or appointment prior to the passage and approval of the act, but constitutional as to such terms resulting

from election or appointment thereafter.

"There can be no possible doubt that the decision with reference to Chapter 169 is correct, and that the legislative intent to make it effective as to the terms of persons elected or appointed prior to its effective date is unconstitutional as in excess of the legislative power. The people could hardly have made clearer or more definite the provision of Section 31 of Article V forbidding the legislature either to increase or diminish the salary or emolument of any officer after his election or appointment."

Therefore, it is my opinion that any increase of salary for the Clerk of Court by way of a straight raise in the salary or by allowing clerks of court to retain fees which they now collect and cover into the general fund of the county, would be unconstitutional under Section 31 of Article V as interpreted by our Supreme Court as above set forth, for those officers elected or appointed prior to its effective date.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General.