

Opinion No. 88

District Judges—Salaries.

Held: The only lawful salary the present Judge of the Eighteenth Judicial District under his appointment is entitled to is the salary which was fixed by law at the time of his appointment and the assuming of his official duties, namely, **Forty Eight Hundred Dollars per annum.**

December 23, 1947

Mr. John J. Holmes
State Auditor
Capitol Building
Helena, Montana

Dear Mr. Holmes:

You have submitted the following inquiry for my opinion:

"Is the District Judge of the Eighteenth Judicial District of the State of Montana entitled to an annual salary of Four Thousand Eight Hundred Dollars (\$4,800.00) or Six Thousand Dollars (\$6,000.00)?"

In answering your inquiry it should be pointed out that the legislature by enacting Chapter 80, Laws of 1947, created the Eighteenth Judicial District. Section 4 of the Act provides:

"That the **powers, duties, compensation** and term of office of the Judge of the said Eighteenth Judicial District shall be the same as provided by law and the Constitution of the State of Montana for **District Judges.**" (Emphasis supplied).

By the terms of Section 6 of Chapter 80, Laws of 1947, the Chapter became effective upon its passage and approval; it was approved February 22, 1947.

At the time of the passage and approval of Chapter 80, Laws of 1947, the compensation or salary of district

judges was fixed by Section 8814, Revised Codes of Montana, 1935, which provided as follows:

"Salaries of district judges. The salary of each district judge is four thousand and eight hundred dollars."

Thereafter, the same session of the legislature by Chapter 114, Laws of 1947, amended Section 8814, Revised Codes of Montana, 1935, as follows:

"The annual salary of each district judge shall be six thousand (\$6,000.00) dollars."

This Act was approved February 28, 1947. However, it should be noted that the legislature did not specify in this Act an effective date; therefore, this Act became effective on July 1, 1947, in accordance with the mandatory provision of Section 90, Revised Codes of Montana, 1935.

Boepple v. Moholt, 101 Mont. 417, 449; 54 Pac. (2d) 857

Thereafter, and on March 22, 1947, in compliance with the mandate of Section 3 of the Act, a judge for the Eighteenth Judicial District was appointed.

In endeavoring to ascertain the intent of the legislature, expressed in Chapter 80, Laws of 1947, it appears that by Section 4 thereof, the legislature clearly expressed its intent, that the powers, duties, compensation or salary and the term of office of the Judge of the Eighteenth Judicial District shall be the same as provided by law and the Constitution of the State of Montana for District Judges, which was as stated above, four thousand eight hundred dollars per annum. There is no indication in the Act that any other compensation or salary was in the mind of the legislature or contemplated by the legislature.

At the time of appointment and at the time of qualifying and assuming office by the Judge of the Eighteenth Judicial District the salary for said Judge was forty eight hundred dollars.

Section 31 of Article V of our State Constitution, provides, in part:

"Except as provided in this constitution, no law shall extend the term of any public officer, or in-

crease or diminish his salary or emolument after his election or appointment: . . ." (Emphasis supplied).

Section 29 of Article VIII of our State Constitution provides, in part:

"The justices of the Supreme Court and the Judges of the District Courts shall each be paid quarterly by the State, a salary, which shall not be increased or diminished during the terms for which they shall have been respectively elected. . . ."

A somewhat similar question was before our Supreme Court in the case of *State re rel. Jackson v. Porter*, 57 Mont. 343, 188 Pac. 375, but in that case the amendment to the statute increasing the Judge's salary became effective in March, 1919, and Judge Jackson was appointed and assumed office in October following. Therein the Court states:

"The amended act became effective in March, 1919, and there is not any reason why Judge Jackson, who was not appointed until October following, should not receive the salary fixed by law at the time he entered upon the discharge of his duties. The three provisions of our constitution quoted above are clothed in different language, but there is no magic in mere words. They mean the same thing, have the same history, and are intended to accomplish the same end." (Emphasis supplied).

It may be pointed out, if the legislature had deemed it proper and had provided that Chapter 114, Laws of 1947, be in full force and effect from and after its passage and approval, a different result could be reached in this opinion.

However, the facts, the legislation, the constitutional provisions being as they are, it is my opinion, the only lawful salary the present Judge of the Eighteenth Judicial District under his appointment is entitled to is the salary which was fixed by law at the time of his appointment and the assuming of his official duties, namely, Forty Eight Hundred Dollars per annum.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General