

Opinion No. 118**Salaries—District Court Clerks—Constitutional Limitations—Statutes.**

Held: The clerk of the District Court is not entitled to the increase in salary provided for by Chapter 177, Laws of Montana, 1949, until the expiration of the term for which he was elected and which he is serving at the time of the enactment of Chapter 177, Laws of Montana, 1949.

June 20th, 1950.

Mr. Robert F. Swanberg
County Attorney
Missoula County
Missoula, Montana

Dear Mr. Swanberg:

In your letter of May 24, 1950, you ask my opinion on the following question:

Does Chapter 177 of the Laws of Montana, 1949, which increases the salary of County officials four hundred (\$400.00) dollars per year and which provides that the Clerk of the District Court shall receive the same salary as the County Treasurer, apply so to increase the salary of the Clerk of the District Court in January, 1951, when the Clerk of the District Court was elected in 1948 for a four-year term beginning January 1949 and ending in December, 1952?

Section 31 of Article V of the Constitution of Montana provides:

"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; provided, this shall not be construed to forbid the Legislative Assembly from fixing the salaries or emoluments of those officers first elected or appointed under this Constitution, where such salaries or emoluments are not fixed by this Constitution."

The Clerk of the District Court is a public officer within the meaning of this constitutional provision since he is elected by a vote of the people for a fixed and definite term of office. *Adami v. County of Lewis and Clark* (1943) 114 Mont. 557, 138 Pac. (2d) 969.

Section 31 of Article V of the Constitution of Montana prohibits the increase or decrease of the salary or emoluments of any public officer during the term for which he is elected. *Poorman v. State Board of Equalization* (1935) 99 Mont. 543, 45 Pac. (2d) 307. The purpose of this constitutional provision is to prevent the Legislature from exerting pressure or exercising control over the officers of the other branches of the government by promise of reward or threat of punishment by increasing or decreasing the income from the public office to which such

officer has been elected or increasing or decreasing the length of the term of office. *State ex rel. Jackson v. Porter* (1920) 57 Mont. 343, 188 Pac. 375.

Section 31 of Article V of the Constitution of Montana applies only to laws which are enacted after any public officer is elected or appointed for a fixed and definite term. This provision does not apply to laws which are in effect at the time of the election or appointment of any public official. For example, it has been held that where a County is reclassified under the provisions of Section 16-2419, Revised Codes of Montana, 1947, because of an increase or decrease in the assessed valuation of the property in the County, thereby increasing or decreasing the salaries of the public officers of the County, it is not a violation of Section 31 of Article V of the Constitution. Since Section 16-2419, Revised Codes of Montana, 1947, was already enacted and was in full force and effect at the time of the election of such public officers, and such officers are charged with the knowledge that their salary may be increased or decreased by the reclassification of the County due to the increase or decrease of the assessed valuation of the property of the County, the provisions of Section 31, of Article V of the Constitution of Montana do not apply. *State ex rel. Jaumotte v. Zimmerman*, (1937) 105 Mont. 464, 73 Pac. (2d) 548. The situation in the problem about which you ask is not the same as in the *State ex rel. Jaumotte* Case in that Chapter 177 of the Laws of 1949 was enacted after the election of the Clerk of the District Court.

Section 2 of Chapter 177 of the Laws of Montana, 1949, provides:

"This act shall be in full force and effect from and after its passage and approval, but nothing contained herein shall be construed to or shall in any manner effect an increase in salary or emolument of any of the public officers listed in Section 1 who are in office at the date this act goes into effect, such officers being entitled to the same salaries they are receiving at the date this act takes effect for the remainder of the terms for which they were elected. If a vacancy occurs by death, resignation, or otherwise, should occur in any of the public offices listed in Section 1 after this act takes effect, the person elected or appointed to fill such vacancy shall be entitled to receive the salary therefore set out in Section 1 of this act."

The Clerk of the District Court is one of the officers mentioned in Section 1 of the act. Section 2 of Chapter 177, Laws of Montana, 1949, is a specific injunction of the Legislature that the increase in salary provided for in Section 1 of the Act is not to go into effect until the expiration of the term of office of the Clerk of the District Court to which the clerk had been elected and which he was serving at the date of the passage of the act. The Clerk of the District Court for Missoula County was elected in 1948 to serve a term of four years beginning in January, 1949, and ending December, 1952. Section 31 of Article V of the Con-

stitution of Montana prohibits the salary of the Clerk of the District Court from being increased or decreased by any law enacted by the Legislature after January 1, 1949.

Therefore, it is my opinion that the Clerk of the District Court is not entitled to the increase in salary provided in Chapter 177 of the Laws of Montana, 1949, until the expiration of the term for which he was elected and serving at the date of the passage of the act which was March 3, 1949. In the particular situation in Missoula County, the Clerk of the District Court will not be entitled to the increase in salary until January, 1953, unless the vacancy occurs before that time.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.