

Opinion No. 14**County Officers—County Attorneys—Salaries of County Attorneys.**

Held: (1) Section 3 and Section 5 of Chapter 150, Session Laws of 1945 are not conflicting insofar as the salary to be paid to a County Attorney of a County of less than four thousand (4,000) population is concerned. Such salary shall be one thousand five hundred ninety-six (\$1,596.00) dollars as specifically provided for in Section 3 of Chapter 150.

April 11, 1949.

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

Dear Sir:

You have called my attention to a purported inconsistency in Chapter 150, Session Laws of 1945, as amended by Chapter 91, Session Laws of 1947, relating to the salaries of County officers, and have requested my opinion as to what the annual salary of a County Attorney should be in a County having a population of less than four thousand (4,000) people.

Chapter 150, Session Laws of 1945, repealed Sections 4867, 4869, 4870, 4871 of the Revised Codes of Montana, 1935, and as amended by Chapter 91, Session Laws of 1947, and by House Bill No. 105, now Chapter 177, Session Laws of 1949, constitutes the present law as to the salaries of County officials. For the purposes of this opinion, Chapter 150, Session Laws of 1945 is controlling since Chapter 177, Session Laws of 1949 can have no application to officers elected before the passage and approval of Chapter 177.

Section 1 of Chapter 150 reads as follows:

"The salaries of County Treasurers, County Clerks, County Assessors and County Superintendents of Schools shall be based on the population and taxable valuation of the County in accordance with the following schedule: . . ."

The schedule consists of two tables, one based on the population of the County and the other on the taxable valuation of property in the

County. Each table has a salary column which is graduated in amount in accordance with population and valuation. The last paragraph of Section 1 is as follows:

"The total salary paid to County Treasurers, County Clerks, County Assessors and County Superintendents of Schools shall be the sum of the salary shown in Column A based on population when added to the salary shown in Column B based on taxable valuation."

Section 3 of Chapter 150, Session Laws of 1945 is as follows:

"The salary of the County Attorney shall be one thousand five hundred ninety six (\$1,596.00) dollars in Counties of less than four thousand (4,000) population. In counties with a population of over forty thousand (40,000) the salary of the County Attorneys shall be three thousand (\$3,000) dollars. In all other Counties the salary of the County Attorney shall be three hundred (\$300.00) dollars a year less than that of the County Treasurer."

Section 5 of Chapter 150 is as follows:

"In September of any year in which the County Treasurer, County Clerk, County Assessor, County School Superintendent, County Sheriff, 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. Salaries so fixed shall apply during the entire term for which the foregoing officials are elected and should a vacancy occur, the person appointed or elected to fill the unexpired term in the office vacated shall receive the same salary as the person vacating the office."

If Section 5, above, is considered, standing alone, it might well be contended that it sets the salaries for all county attorneys in the State. However, Section 5 must be read in conjunction with Section 3. Section 3 specifically provides for county attorneys alone. Section 5 provides for county attorneys generally along with other elective county officials.

Section 10520, Revised Codes of Montana, 1935, deals with construction of statutes and is as follows:

"In the construction of a statute the intention of the legislature, and in the construction of the instrument the intention of the parties, is to be pursued if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it."

In the case of *Aleksich v. Industrial Accident Fund*, 116 Mont. 127, 151 Pac. 1016, the court construes Section 10520, *Supra*, and says:

"The doctrine of ejusdem generis is a well known rule of construction to aid in ascertaining the meaning of statutes and other written instruments, the doctrine being that where an enumeration of specific things is followed by some more general word or phrase, such general phrase is to be held to refer to things of the same kind as those enumerated. **'The rule is based on the obvious reason that if the legislature had intended the general words to be used in their unrestricted sense they would have made no mention of the particular classes.'** (59 C. J. 982)".

It would seem that the last portion of the above quoted opinion is particularly applicable to the question at hand. If our legislature had intended that Section 5 of Chapter 150 should set the salary for County Attorneys in counties of less than four thousand population, the law makers most certainly would not have inserted Section 3 which specifically fixes the salaries of County Attorneys in counties of less than four thousand and more than forty thousand people. Section 5 is a general provision and insofar as County Attorneys are concerned relates only to those County Attorneys not provided for in Section 3. It is only County Attorneys of counties over four thousand and less than forty thousand that are provided for in Section 5 by a reference to the schedule in Section 1.

I am aware of the rule of construction that says in the event of conflicting provisions in a statute, the last in order of arrangement prevails. I feel that such a rule does not apply here. In the case of *State ex rel. Boone v. Tullock*, 72 Mont. 482, 234 Pac. 277, our Supreme Court says:

"It is the rule, of course, that where two provisions of an act of the Legislature are conflicting and cannot be harmonized, the last in order of arrangement controls. But where there is a statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible."

It is my opinion that Sections 3 and 5 of Chapter 150, Session Laws of 1945 can be harmonized and that there is no inconsistency inasmuch as Section 5 merely provided for the manner of fixing salaries of County Attorneys not specifically set out in Section 3. I am therefore of the opinion that the salary of a County Attorney of a County of less than four thousand (4,000) shall be one thousand five hundred ninety six (\$1,596.00) dollars as provided in Section 3 of Chapter 150, Session Laws of 1945.

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