

**Opinion No. 38**

**Public Officers—Legislators—Emoluments of Office—Assignments—  
Revised Codes of Montana, 1947—Chapter 43, Session Laws, 1947.**

**Held: The right to obtain at cost to the state one copy of the 1947, Revised Codes of Montana, adheres to the office of member of the Thirtieth Legislative Assembly as an emolument of that office and such right is not a proper subject of assignment.**

July 20th, 1949.

Hon. Sam Mitchell  
Secretary of State  
Helena, Montana

Dear Mr. Mitchell:

You have referred to me for opinion an assignment of a right of a Legislator to obtain the 1947 Revised Codes of Montana.

The question is presented whether or not the right of a member of the Thirtieth Legislative Assembly to obtain a copy of the codes is an assignable right.

The distribution of the 1947 Codes is governed by Chapter 43, Session Laws of 1947; Section 8 of which states:

"The Secretary of State, upon receipt of said published codes, shall distribute the same, or so many of them as may be necessary, in the following manner, to-wit:

To each Department of the State Government of Montana, one copy.

To the Code Commissioner and each member of the Thirtieth Legislative Assembly, one copy upon the payment to the State of Montana by the Code Commissioner and by any member of the Legislature receiving such copy, the actual cost price thereof to the State."

Further in Section 8 there appears:

"The Secretary of State may further distribute the Revised Codes of Montana, of 1947, at his discretion, to other departments of government not herein enumerated when the same are deemed absolutely necessary, and may exchange new sets for worn out sets when the latter are returned to his office. The copies of said codes distributed under the provisions of this section, shall remain the property of the State or County office or department to which they are delivered; **provided however, that copies of the code purchased by the Code Commissioner or by any member of the Thirtieth Legislative Assembly of Montana shall become the personal property of the person or persons paying the cost thereof to the State.**" (Emphasis supplied.)

The right to obtain the 1947 Codes accrued to the member of the Thirtieth Legislative Assembly by virtue of his membership in that body. It is a right to obtain from the Secretary of State, "one copy upon the payment to the State of Montana . . . by any member of the Legislature receiving such copy, the actual cost price to the State."

The question that arises now is whether or not that right is of itself subject to sale or assignment.

No statute governs the situation. It becomes necessary, then, to examine the general law.

Volume 22 Ruling Case Law 525, Public Officers, Section 239, states in part:

"The emoluments of a public office are not considered the proper subject of barter and sale (citing *Spence v. Harvey* 22 Cal. 336, 83 Am. Dec. 9) and public policy in particular prohibits the assignment of unearned salaries and fees. . . . The restriction is one in the public interest and is not considered as having been adopted for the benefit of the person rendering the service."

Volume 43, American Jurisprudence, Public Officers, Section 37 is to the same effect.

Black's Law Dictionary defines 'emolument' thus:

"The profit arising from office or employment, that which is received as a compensation for services, or which is annexed to the possession of office as salary, fees, and perquisites; advantage;

gain, public or private. Webster. Any perquisite, advantage, profit, or gain arising from the possession of an office."

It is clear that the right to receive at cost a copy of the 1947 Codes is an emolument of the office of a member of the Thirtieth Legislative Assembly. It is further clear that an assignment of that right is improper.

Nor can the provision making the property, **after having been paid for**, the personal property of the person paying for it alter the assignability of that right.

The latter provision would merely make proper the sale of the Codes after they have been obtained by virtue of the legislators exercise of the right.

It is therefore my opinion that the right to obtain, at the cost to the State, one copy of the 1947, Revised Codes of Montana, adheres to the office of a member of the Thirtieth Legislative Assembly as an emolument of that office and such right is not a proper subject of assignment.

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