

Opinion No. 114**Salaries—County Treasurer—Clerk
of the District Court.**

Held: Where a statute provides that county officials are to receive a salary based on the population and taxable valuation of the county, and where the statute was passed prior to the election of the county officials, an increase in the population or taxable valuation of the county creates a proportionate salary increase for those officials and does not violate Section 31 of Article V of the Constitution of the State of Montana. The Clerk of the District Court is to receive the same salary as the County Treasurer.

September 6, 1952.

Mr. Paul J. Murphy
County Attorney
Judith Basin County
Stanford, Montana

Dear Mr. Murphy:

You have requested my opinion on the question of what salary shall attach to the office of clerk of the district court for the forthcoming term of that office, which will commence in January of 1953. More specifically you state that since the salary of the county treasurer was set, the taxable valuation of the county has increased; and, in view of Section 25-608, Revised Codes of Montana, 1947, as amended by Section 1, Chapter 177, Laws of 1949, you question whether the clerk of the district court is to receive a salary increase based on the present valuation of the county.

Section 25-608, (supra) provides:

"The salary of the clerk of the district court shall be the same as that paid to the county treasurer . . ."

Section 25-605, Revised Codes of Montana, 1947, as amended, states that the salary of the county treasurer shall be based on the population and taxable valuation of the county in accordance with the salary schedule enumerated therein. This section was enacted as Section 1, Chapter 150, Laws of 1945, and has been amended by Section 1, Chapter 177, Laws of 1949, and Section 1, Chapter 118, Laws of 1951. The effect of the 1949 amendment was to increase the salaries of the various county offices; while the 1951 amendment included in the schedule counties of larger populations and greater taxable value than had previously been classified. Therefore, the 1951 amendment did not effect existing salaries. Where a statute is amended by an act providing that the original statute "shall be amended so as to read as follows," repeating the original and adding to it new provisions not in conflict with the original provisions, the repeated provisions are not a new enactment, but remain in force from the time of their original enactment.

Section 25-611, Revised Codes of Montana, 1947, enacted as Section 2, Chapter 117, Laws of 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 of the salary or emolument of any pub-

lic officers listed in Section 1 (25-605 to 25-609) 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 . . ."

The act was approved and took effect on March 3, 1949. The office of county treasurer was last filled by election in November of 1950 for a term of office to commence in January of 1951 and terminate in January of 1955. Thus, the county treasurer does not come within the prohibition of Section 25-611 (supra).

The question thus becomes: Does Section 31 of Article V of the Constitution of Montana bar the county treasurer from receiving a proportionate increase in salary due to the increase of the taxable valuation of the county?

State ex rel. Jaumotte vs. Zimmerman, 105 Mont. 464, 73 Pac. (2d) 548, is in point. In that case the county was reclassified from a sixth to a seventh class county. In answer to the contention that Section 31 of Article V prohibited an ensuing decrease of salary, the court, citing an Oklahoma opinion, said:

"The foregoing provision of the constitution, prohibiting a change of salary of an officer during his term of office, does not require that the salary of an officer during his term of office shall be uniform throughout his term. It requires only that there shall be no difference in his salary during different parts of his term, except such as result from operation of a law enacted prior to his election or appointment . . . So, in the instant case, the officers salary is made to depend upon the population of his county at biennial periods, and the fact that the census at one of the periods, occurring after his term began, exceeds the population as shown by the preceding census, and thereby operated to give the officer a greater compensation for the latter period of his term than for the first period does not constitute a change of salary by operation of any law enacted during his term, but is a difference in

salary resulting from the operation of a law enacted before his term begun.”

For a further discussion of this rule, see Volume 23, Opinions of the Attorney General, Opinion No. 118, at page 318.

It is my opinion, therefore, that the county treasurer, and all county offices enumerated in Section 25-605 (supra), are to receive a proportionate increase in salary in accordance with the increase in the taxable valuation of the county.

It is further my opinion that the statute which provides for the salary of the clerk of the district court is to be construed with the statute which determines the salary of the county treasurer so that the same salary attaches to both offices. The salary of the treasurer being determined by operation of law and the salary of the clerk of the district court being set by resolution of the county commissioners pursuant to Section 25-609, Revised Codes of Montana, 1947.

Very truly yours,
ARNOLD H. OLSEN
Attorney General