

Opinion No. 14

**Salaries—County Officers—District
Court Clerks**

**Held: That a clerk of the district
court, elected in 1948 to a term**

commencing January 1, 1949, is not entitled to a raise in pay under Chapter 150, Laws of 1945, amended by Chapter 91, Laws of 1947, as a result of a resolution of the Board of County Commissioners in September, 1950, establishing higher population and taxable valuation figures than those established in 1948.

April 28th, 1951.

Mr. Wesley Castles
County Attorney
Missoula, County
Missoula, Montana

Dear Mr. Castles:

You have requested my opinion on this question:

"Is the Clerk of Court, elected to office in 1948 to a term commencing January 1, 1949, entitled to a raise in pay under Chapter 150, Laws of 1945 as amended by Chapter 91, Laws of 1947, as a result of a resolution of the Board of County Commissioners in September, 1950, establishing the population and taxable valuation figures which are higher than the figures established in 1948?"

Section 1 of Chapter 150, Laws of 1945, provides:

"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 . . ." (Emphasis supplied)

The schedule has two salary columns which are graduated in amounts, one based on population and the other on taxable valuation. The total salary of the particular official is found by adding the salary determined by the population with the salary determined by the valuation.

By Chapter 91, Laws of 1947, the law was changed so that the salary of the Clerk of the district court was to be the same as that paid to the county treasurer.

Hence, a person elected clerk of the district court in 1948 to a term commencing January 1, 1949, would receive a salary equal to that of the county treasurer's, which salary would

be based upon the county's population and taxable valuation and would be determined from the schedule of Section 1, Chapter 150, Laws of 1945. This was the effective law governing the clerk of court's salary on January 1, 1949.

As pointed out in my opinion No. 118, Volume 23, Opinions of the Attorney General, Section 31 of Article V of the Constitution of Montana provides in part:

". . . no law shall extend the term of any public officer, or increase or diminish his salary or emolument after his election or appointment . . ."

However, in this connection it was further said in opinion No. 118, supra:

"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."

Therefore, it is clear that looking at the law I have mentioned so far, it is possible, without violating the constitutional provision, to increase or decrease the salary of the clerk of the district court during his elected term

provided the population or taxable valuation of the county were to change.

However, it is my opinion that Section 5 of Chapter 150, Laws of 1945, holds the key to your question. This Section reads:

"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." (Emphasis supplied)

Applying the provisions of this section to your question we see that the clerk of the district court was elected in 1948; that September of 1948 was the time for the county commissioners to fix the salaries of the officials to be elected in 1948 and in conformity with the heretofore mentioned schedule of Section 1, Chapter 150, Laws of 1945; that the salary is based on the last decennial federal census and on the taxable valuation at the time the salaries are fixed; and that the salary so fixed remains during the entire term of the elected official.

You indicated in your letter that because of some of the language in the quoted portion from Opinion 118, supra, you wondered if it was possible to increase or decrease the salary of a clerk of the district court during his term of office by having the Board of County Commissioners re-establish the population and taxable valuation figures. I think the change in the law since the Jaumotte case arose is the answer. When the Jaumotte case arose, salaries of the county officers were based upon the classification of the county. This was embodied in Sections 4867, 4869, 4970, and 4871, Revised Codes of Montana, 1935, and what is now Section

16-2419, Revised Codes of Montana, 1947. By Section 4742, Revised Codes of Montana, 1935, the Board of County Commissioners every two years was to make an order designating the class to which the county belonged. Thus, it was impossible for a county officers salary to be changed during his term by changing the classification of the county. All of this was amended by Chapter 150, Laws of 1945, especially Section 5, which set up a new standard for determining salaries, set the time for fixing the salary, required that the salary so fixed apply for the entire term of office and specifically repealed Sections 4867, 4869, 4870, and 4871, Revised Codes of Montana, 1935. However, the principle set out in the Jaumotte case that the Constitutional provision which requires that there shall be no difference in salary during the term of office except such as results from the operation of a law enacted prior to election or appointment is still sound and applicable.

It is my opinion that a clerk of the district court, elected in 1948, to a term commencing January 1, 1949, is not entitled to a raise in pay under Chapter 150, Laws of 1945, amended by Chapter 91, Laws of 1947, as a result of a resolution of the Board of County Commissioners in September, 1950, establishing higher population and taxable valuation figures than those established in 1948.

Very truly yours,
ARNOLD H. OLSEN
Attorney General