

strued as applying to county employees. Chapter 131, Laws of 1949, as amended by Chapter 152, Laws of 1951, provides for vacation leave for state, county and city employees. Section 7 of the 1949 Act declares:

"The term 'employee' as used herein, does not refer to or include elected state, county, or city officials, or school teachers."

See, also: Volume 24, Opinions of the Attorney General, Opinion Number 1.

There is no statute which provides that a county official may receive additional compensation for vacation time not taken; nor, do the statutes provide that a county official may receive additional compensation for overtime spent in performing official duties. Therefore, the rule, "what is not by law imposed as expenses upon a county is not a charge against it" applies. (*Wade vs. Lewis and Clark County*, 24 Mont. 335, 61 Pac. 879; *In re Hyde*, 73 Mont. 363, 236 Pac. 248.)

In 15 Opinions of Attorney General 278, No. 398, this office ruled:

"While there is no express provision in our statutes relating to vacations it is my opinion that an officer or deputy whose office is determined by law and whose salary is fixed by law, which the commissioners have no right to increase or diminish, should be permitted to take a reasonable vacation for recreation or for the benefit of his health at a time when the work in the office will permit it with no additional cost or loss to the county. Apparently this has been the custom for many years in many counties."

I reaffirm this holding.

Our Supreme Court, in discussing a related problem in *Brannin vs. Sweet Grass County*, 88 Mont. 412, 415, 293 Pac. 970, announced:

"Where the salary or compensation of a county official is definitely fixed by law, it is generally held that such sum is intended to include his entire official remuneration and to preclude extra charges for any services whatsoever, unless it is clear that the statute contemplated and intended

Opinion No. 16.

County Officers—Overtime, Compensation for Vacations—Compensation For Time Not Taken.

HELD: An elected county official may not receive additional compensation for vacation time not taken.

An elected county official may not receive additional compensation for overtime spent in performing official duties.

April 6, 1953.

Mr. Manuel J. Roth
County Attorney
Garfield County
Jordan, Montana

Dear Mr. Roth:

You have requested that I issue an official opinion on the following questions:

1. "May an elected county official receive additional compensation for vacation time not taken?"
2. "May an elected county official receive additional compensation for overtime spent in performing the duties which attach to the office?"

At the outset I wish to emphasize that this opinion refers only to elected county officials and is not to be con-

additional compensation for certain extra services . . .' (15 C. J. p. 497) And the officer should be able to show not only that the services were performed for the county as such officer, but also a statute or constitutional provision authorizing the particular services in question, in force at the time the services were performed or else a contract therefor authorized by law. (Citing authority) At a very early date (1874) this court declared the correct governing principle, viz.: that 'If the statute has not conferred the right to compensation, the court does not possess it by implication, and cannot enforce it for that would be to violate the law instead of enforcing it.' (Citing authority.)

Therefore, in the question which you have presented, the county official must point to a particular statute or constitutional provision which permits elected county officials to accumulate vacation leave, and to collect compensation for overtime spent in discharging the duties of the office, before the county commissioners have the right to honor such claims.

I wish to further point out that any other holding would seriously impair the financial stability of the county inasmuch as it would be impossible to budget for such charges. (See Section 16-1901 et seq., R.C.M., 1947.)

It is therefore my opinion that an elected county official may not receive additional compensation for vacation time not taken.

It is further my opinion that an elected county official may not receive additional compensation for overtime spent in performing official duties.