

Opinion No. 55.
County Commissioners — Emoluments
—Salaries—Increase During Term
of Office—Inspections.

HELD: 1. The per diem allowed to county commissioners for the inspection of bridges is an emolument within the meaning of Section 31, Article V of the Montana Constitution.

2. Those county commissioners who are elected prior to the enactment of Chapter 84, Laws of 1953, are not entitled to receive the compensation provided for in that Act, as such would constitute an increase in the emoluments of the office during the term to which the officer had been elected.

January 26, 1954.

Mr. Leonard A. Schulz
County Attorney
Beaverhead County
Dillon, Montana

Dear Mr. Schulz:

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

“Are county commissioners, elected prior to the enactment of Chapter 84, Laws of 1953, entitled to the increased compensation provided for in that Act?”

Chapter 84, Laws of 1953, amended Section 32-314, R.C.M., 1947, to provide that persons making an inspection of highways or bridges within the county are to receive \$12.00 per day and actual expenses therefore, instead of \$8.00 per day and actual expenses as previously had been provided.

The question involves an interpretation of Section 31, Article V of the Montana Constitution, which declares:

“Except as otherwise provided in this constitution, no law shall extend the term of any public officer, or increase or diminish his salary or emolument after his election or appointment. . .”

In *Scharrenbroich vs. Lewis and Clark County*, 33 Mont. 250, 83 Pac. 482, the word salary was defined to mean:

"A fixed compensation, made by law to be paid periodically for services, whether there be any services actually rendered or not."

Since the sum of \$12.00 is to be paid only upon an inspection being made, the statute does not constitute the grant of a salary to the official. Therefore, it is necessary to determine whether or not the fee is an emolument as that word is used in the Constitution.

Webster defines emolument as "The profit from office, employment or labor; compensation; fees or salary."

In *Irwin vs. State*, 147 Tex. Cr. 6, 177 S.W. (2d) 970, it was said that the term emolument means "a pecuniary profit, gain or advantage."

In *United States vs. MacMillan*, 209 Fed. 266, it was stated that an emolument of an office is a sum received by the officer for the performance of some act or service pursuant to the obligation or sanction of his office, and for which he has the right by virtue of his office to exact the payment.

In *Apple vs. Crawford County*, 105 Penn. 300, 51 Am. Rep. 205, that court interpreted a similar constitutional provision and declared that the word emolument imported more than salary or fees, and embraced all the profits derived from an office which would include the compensation paid to a sheriff for the boarding of prisoners. The court then concluded that the amount having been fixed at a certain sum per diem, the legislature had no power, during the sheriff's term of office to provide that the compensation for such service should rest in the discretion of a majority of the judges of the court of quarter sessions.

Also, in the *Scharrenbroich case*, supra, the court stated that the word emolument is more comprehensive than the word salary.

In *Sarter v. Siskiyou County*, 42 Cal. App. 530, 183 Pac. 852, the court held that an increase such as presented in the facts at hand constituted an increase in compensation during the term of office and stated:

"... No one would seriously contend that the payment by the day of a person for services rendered is any less a compensation than a salary or a definite sum per month or year would be."

It is, therefore, my opinion that the compensation paid county commissioners for the inspection of highways or bridges is an emolument within the meaning of Section 31, Article V of the Montana Constitution.

It is further my opinion that those county commissioners who are elected prior to the enactment of Chapter 84, Laws of 1953, are not entitled to receive the compensation provided for in that Act, as such would constitute an increase in the emoluments of the office during the term to which the officer had been elected.