

Opinion No. 70.

State Board of Hail Insurance Chairman—Salary of—Appropriation Bills—House Bill 370, Laws of 1953.

HELD: 1. The present chairman of the Hail Insurance Board is entitled to receive a salary increase as provided in House Bill 370, said increase not being in contravention to the Montana Constitution.

2. An increase in salary may be effected by a general appropriation bill, in conflict with a salary statute, said salary statute being deemed suspended and inoperative during the period the appropriation bill is operative.

April 26, 1954.

Mr. W. L. Fitzsimmons
Executive Clerk
State Board of Examiners
Capitol Building
Helena, Montana

Attention: Mr. G. L. Bryant

Dear Mr. Fitzsimmons:

Your office has requested my opinion as to the proper salary to be paid the Chairman of the Montana State

Board of Hail Insurance in view of House Bill 370, Laws of 1953, a general appropriation bill increasing his salary.

Section 82-1519, R. C. M., 1947, as amended by Section 1 Chapter 53, Laws of 1951, fixes the salary of the chairman at \$300.00 per month. A line item in House Bill 370, Laws of 1953, provides as follows:

“From the hail insurance administrative fund:

“For salaries of chairman, four thousand eight hundred dollars\$4,800.00”

Section 31, Article V of the Montana Constitution provides in part:

“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” (Emphasis supplied.)

The present chairman of the Hail Insurance Board was reappointed by the Governor to that position by letter dated March 13, 1953. At the time this letter was written, the chairman's then existing term of office did not expire until April 18, 1956. The chairman took his oath of office on April 1, 1953, assuming the duties of his office on April 19, 1953, following the expiration of his previous term on April 18, 1953. House Bill 370, supra, was approved on March 18, 1953. On this date the chairman was not acting in his capacity as chairman of the Hail Insurance Board, by virtue of the Governor's letter of appointment, but rather in his then capacity of board chairman, under his prior appointment.

The purpose behind the constitutional prohibition (Sec. 31, Art. V, supra) is to remove from the legislature any temptation to control either the executive or judicial branches of state government by either promises of increases or threats of decrease to public officials. State ex rel. Jackson v. Porter, 57 Mont. 343, 188 Pac. 375.

House Bill 370, supra, became law on March 18, 1953 (Sections 43-502 through 43-505, R. C. M., 1947). It follows then that the chairman of the Board of Hail Insurance, commencing

his term of office subsequent to the date on which House Bill 370 became law, was entitled to the increase.

That a general appropriation bill, not in violation of a constitutional amendment, may supersede and suspend a salary statute for the appropriation period is clear. *State ex rel. Henneford v. Yelle*, 12 Wash. (2d) 434, 121 Pac. (2d) 948; *Belknap v. U. S.*, 150 U. S. 588, 14 S. Ct. 183, 37 L. Ed. 1191; *U. S. v. Langston*, 118 U. S. 389, 6 Sup. Ct. 1185, 30 L. Ed.:164. Where the legislative intent is clearly manifest and is not in violation of any constitutional inhibition, the "appropriation statute is considered to be in conflict with a previous statute fixing such salary and to operate so as to suspend the previous general statute during the currency of the appropriation statute." *Brooks v. Jones*, 80 S. C. 443, 61 S. E. 946. See also *Brimball v. Beattie* (S. C.) 177 S. E. 668; *Plowden v. Beattie* (S. C.) 193 S. E. 651, and *State v. Clausen* (Wash.) 138 Pac. 656, wherein the court stated:

"Appropriation bills, although temporary in duration are nevertheless general laws. They are most carefully prepared and maturely considered. If they do not offend against the Constitution and are found to be in irreconcilable conflict with a permanent Act, the latter will be held to be suspended or repealed during the time the appropriation bill is enforced (citing cases)."

House Bill 370, Laws of 1953, insofar as it affects the chairman of the Hail Insurance Board is not in conflict with the Montana Constitution. On the basis of the law and facts herein stated, it is my opinion that:

1. The present chairman of the Hail Insurance Board is entitled to receive a salary increase as provided in House Bill 370, Laws of 1953, said increase not being in contravention to the Montana Constitution.

2. An increase in salary may be effected by a general appropriation bill, in conflict with a salary statute, said salary statute being deemed suspended and inoperative during the period the appropriation bill is operative.