

Opinion No. 13**County Officers—Salaries—Powers
of Board of County Commissioners.**

HELD: The county officers enumerated in Section 25-605, R.C.M., 1947, are entitled to the salaries set by that section and when a board of county commissioners, acting on incomplete or erroneous information, fixes the salaries at an incorrect amount, they must later rescind their action and fix the salaries at the correct figure, even though the time set by the statute for the action has expired.

May 24, 1955.

Mr. Smith McNeill
County Attorney
Lincoln County
Libby, Montana

Dear Mr. McNeill:

You have requested my opinion upon the following question:

“When a board of county commissioners, acting on incomplete or erroneous information, fixes salaries of county officers at an incorrect amount, may the board later rescind its action and fix the salaries at the correct amount, even though the time set by statute for their action has expired?”

You have given me the following facts:

The value of net proceeds returned by a mining company, for purposes of taxation, was contested by the State Board of Equalization. The value declared by the company, when added to the taxable value of all other property in the county, brought the total valuation of the

county to a figure slightly less than seven million dollars. The value of the net proceeds as set by the State Board of Equalization made the total valuation of the county slightly more than seven million dollars.

While the controversy was in progress, the board of county commissioners met, as directed by Section 25-609, R.C.M., 1947, to set the salaries of the county officers governed by the provisions of Section 25-605, R.C.M., 1947, for the coming term. Using the lower estimate of the total taxable valuation of the county, the board set the salaries according to the rate fixed in the statute for counties having a taxable valuation of less than seven million dollars. When the controversy between the mining company and the State Board of Equalization was settled, the correct amount of net proceeds as fixed by the State Board of Equalization brought the total taxable valuation of the county to more than seven million dollars, a figure which would entitle the county officers covered by Section 25-605, supra, to higher salaries than those set by the commissioners.

The primary question in this case is whether the legislature in enacting Sections 25-605 and 25-609, supra, intended to give boards of county commissioners complete power to fix salaries of the other county officers, or merely provided a means by which the amount of salaries could be correctly ascertained, thereby directing the board of county commissioners to fix salaries according to the standard.

It is the general rule of law that the salary fixed by statute for the compensation of public officers is an incident of the office and belongs to the legal holder of the office as a matter of right (*Rusch vs. Board of County Commissioners*, 121 Mont. 162, 191 Pac. (2d) 670). The right to fix the salaries of public officers is exclusive in the legislature, except where limited by the State Constitution. (*Phillips vs. Graham County*, 17 Ariz. 208, 149 Pac. 755).

Relying upon these rules, it would appear that the legislature intended to fix the salaries of public officers by Section 25-605, and give them an

absolute right to the salary so fixed. The duty of the commissioners in that case is a mere ministerial duty to determine the facts, and not the legislative function of setting the amount of salary to which the officers are entitled. The title of Chapter 150, Laws of 1945, which originally enacted Sections 25-605 and 25-609, supra, into law, indicates that the salary scale is mandatory and that the board must fix salaries in the amounts set. It reads:

"An Act Relating To The Salaries Of County Officers; Providing a Method And Procedure For Fixing And Determining Such Salaries; Requiring Boards of County Commissioners to Fix Such Salaries in Accordance With Such Method and Procedure; and Repealing Sections 4867, 4869, 4870 and 4871 Revised Codes of Montana, 1935, and All Other Acts and Parts of Acts in Conflict Herewith." (Emphasis supplied.)

A situation almost identical to the present case was before the Montana Supreme Court in *Jaumotte vs. Zimmerman*, 105 Mont. 464, 73 Pac. (2d) 548. In the *Zimmerman* case, Sections 16-2419 and 16-2420, R.C.M., 1947, which governed the fixing of salaries for county officers prior to the enactment of Sections 25-605 and 25-609, supra, were questioned.

Under Section 16-2420, the boards of county commissioners were directed to meet in September to fix the classification of the county. The amounts of the salaries of the county officers were then set according to the classification in which the county fell. This system corresponded very closely with the present procedure under Sections 25-605 and 25-609, supra, and the issues before the court in the *Zimmerman* case parallel this present situation.

The board of commissioners at their September meeting had failed to set the classification of the county upon which salaries of county officers were to be based. The taxable value or valuation in the county had declined, and the commissioners should have lowered the county from 6th to 7th class, thereby lowering the salaries of the county officers. When their oversight was called to their

attention, the commissioners met in February of the succeeding year, and correctly fixed the classification in the lower category. This action was challenged by county officers whose salaries were lowered thereby. Their contention was that the board, having failed to act, could not meet after the time had expired and remedy the deficiency. They contended further that the act or failure to act by the commissioners definitely fixed the salary and that they were not bound to accept the lower salary according to the statute.

The Supreme Court held that the salary scale set by statute was the correct salary scale, and the requirement that the commissioners fix the salaries was merely a direction given "with a view to the proper, ordinary and prompt conduct of business". The court also held that the board's action in meeting to correct the situation in February of the next year was proper and that the salaries, when properly set according to the statutory scale, were effective. The present situation is in all respects similar to the Zimmerman case and the construction placed by the court upon Sections 16-2419 and 16-2420, R.C.M., 1947, applied with equal force to Sections 25-605 and 25-609, *supra*.

It is therefore my opinion that the county officers enumerated in Section 25-605, R.C.M., 1947, are entitled to the salaries set by that section and when a board of county commissioners, acting on incomplete or erroneous information, fixes the salaries at an incorrect amount, they must later rescind their actions and fix the salaries at the correct figure, even though the time set by the statute for their action has expired.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.