

mane to their basic employment and thereby avoid the salary maximums established by the legislature in the Montana Liquor Control Act.

3. The Liquor Control Board can appoint only one vendor for each state liquor store.

4. The Liquor Control Board can adopt rules and regulations whereby assistant vendors can assist vendors in performing the duties of the vendor.

5. The Liquor Control Board may appoint any number of assistant vendors in each state liquor store, and they must be paid under the salary schedule in use for "vendors" and not under the salary classification for "other employees."

February 16, 1956

Mr. J. E. Manning, Administrator
Montana Liquor Control Board
Helena, Montana

Dear Mr. Manning:

You have requested my official opinion on the following questions:

(1) May the Liquor Control Board assign specific duties to employees holding each of the job classifications mentioned in Section 4-108, R.C.M., 1947, as amended (that is, administrator, assistant administrator, chief accountant, I.B.M. office superintendent and vendor) and pay each of such employees up to the applicable statutory maximum annual salary for the performance of only such assigned duties?

(2) If so, may the Board pay such employees additional compensation in excess of the statutory maximum for the performance of additional duties not regularly assigned?

(3) May the Liquor Control Board classify the jobs of all employees for whom no job classifications are prescribed by statute and assign specific duties to each job, for the performance of which it may compensate the employee

Opinion No. 61

**Liquor Control Board—
Salaries of Vendors,
Assistant Vendors —
Montana Liquor Control Act**

HELD: 1. The Liquor Control Board may define duties and job classifications of its employees, limited only where the legislature has specifically defined such duties.

2. The Liquor Control Board can not assign additional duties to their employees, which duties and ger-

holding the same up to the applicable statutory maximum annual salary?

(4) If so, may the Board pay such employees additional compensation for the performance of additional duties not regularly assigned?

(5) What, if any, legal limitation is there upon the number of vendors that may be appointed for a single state liquor store?

(6) Does Section 4-115, R.C.M., 1947, when read together with other sections of the Montana Liquor Control Act, and in particular with Section 4-152, R.C.M., 1947, require that each employee whose duties require him to make sales of merchandise be classified and compensated as a "vendor" within the meaning of said Act?

(7) Under the provisions of the Montana Liquor Control Act, and in particular Section 4-108 R.C.M., 1947, should an assistant vendor be classified as a "vendor" or in the "other employee" group for pay purposes?

Section 4-108, R.C.M., 1947, as amended by the 1951 legislative session, is pertinent to several of the questions presented and for that reason is being set forth in full:

"The board shall fix the following salaries of its employees at such sums as it deems advisable, to-wit: The salary of the state liquor administrator in a sum not exceeding six thousand dollars (\$6,000.00) per year; the salary of the assistant state liquor administrator in a sum not exceeding the sum of five thousand dollars (\$5,000.00) per annum; the salary of the chief accountant not exceeding the sum of five thousand dollars (\$5,000.00) per annum; the salary of the I.B.M. office superintendent not exceeding the sum of four thousand two hundred dollars (\$4,200.00) per annum; the salary of a vendor of a "Class C" store in the sum not exceeding four thousand two hundred dollars (\$4,200.00) per annum; the salary

of any other employees of a "Class A" store in a sum not exceeding the sum of three thousand three hundred dollars (\$3,300.00) per annum; the salary of a vendor of a "Class B" store in a sum not exceeding three thousand six hundred dollars (\$3,600.00) per annum; the salary of any other employee of a "Class B" store in a sum not exceeding the sum of three thousand dollars (\$3,000.00) per annum; the salary or compensation of a vendor of a "Class C" store in a sum not exceeding three thousand three hundred dollars (\$3,300.00) per annum; the salary of any other employee of a "Class C" store in a sum not exceeding the sum of two thousand eight hundred dollars (\$2,800.00) per annum; the salary of any other employee of the board in a sum not exceeding the salary of the sum of three thousand nine hundred dollars (\$3,900.00) per year. The volume of the individual sales shall be taken into consideration in fixing the salary of store vendors, assistant vendors and employees.

The assistant state liquor administrator shall exercise such powers and perform such duties in the administration of the state liquor control act and Montana Beer Act as the board may prescribe."

Section 4-112 (g), R.C.M., 1947, states that:

"The board shall have the following functions, duties and powers:

* * *

(g) To appoint vendors, and also every officer, inspector, clerk or other employee, required for the operation or carrying out of this act, and to dismiss the same, fix their salaries or remuneration, assign them their title, **define their respective duties and powers**, and to engage the service of experts and persons engaged in the practice of a profession, if deemed expedient;

(Emphasis supplied)

Section 4-113, R.C.M., 1947, provides, as pertinent, that:

"(1) The board may make such regulations, not inconsistent with this act, as to the board seem necessary, for carrying out the provisions of this act, and for the efficient administration thereof.

(2) Without thereby limiting the generality of the provisions contained in subsection 1 hereof, it is declared the power of the board to make regulations in the manner set out in that subsection shall extend to and include the following:

* * *

(b) **Prescribing the duties of the officers, clerks and servants of the board,** and regulating their conduct while in the discharge of their duties;

(Emphasis supplied)

* * *

Section 4-112, supra, in listing the powers of the Liquor Control Board over their employees specifically confers the authority to "... define their respective duties and powers ...". The following section, in discussing the regulatory power of the Board, elaborates on the previous section by enumerating, but not limiting, the powers of the Board. That section, 4-113, supra, specifically states that the Board has the power and duty of "... Prescribing the duties of the officers, clerks and servants of the board ...". The expression of legislative intent is clear and unambiguous and leaves little doubt but that the Liquor Control Board can assign specific duties and provide job classifications for its employees, limited only where the legislature has defined such duties with particularity.

It is therefore my opinion that the Liquor Control Board may define duties and job classifications for its employees, limited only where the legislature has specifically defined such duties.

In considering the question of additional compensation for the performance of duties in addition to those specifically assigned or included by job classification, the majority

of cases are in accord with the following quote from Section 862 of Mechem's work entitled, "Public Offices and Officers", page 580, wherein it is stated that:

"An officer who accepts an office, to which a fixed salary or compensation is attached, is deemed to undertake to perform its duties for the salary or compensation fixed, though it may be inadequate, and if the proper authorities increase its duties by the addition of others germane to the office, the officer must perform them without extra compensation. Neither can he recover extra compensation for incidental or collateral services which properly belong to or form a part of the main office. . . ." (Emphasis Supplied)

In the early case of *Territory v. Carson*, 7 Mont. 417 (1888), the defendant, a probate judge, by legislative action had the duty of authorizing the payment of a bounty for killing bears, mountain lions, wolves and coyotes. This task was increased through legislative action by the addition of prairie-dogs and ground-squirrels to the list. In holding the judge could receive no extra compensation for handling the additional work, the court followed the rule set forth above. In the *Carson* case, the court stated that:

"... The successful effort to obtain office is not unfrequently speedily followed by efforts to increase its emoluments, while the incessant changes which the progressive spirit of the times is introducing effects, almost every year, changes in the character and additions to the amount of duty in almost every official station; and to allow these changes and additions to lay the foundation of claims for extra services would soon introduce intolerable mischief . . ."

See also *Peterson v. City of Butte*, 44 Mont. 401, 120 Pac. 483, and *Wight v. Meagher County Commissioners*, 16 Mont. 479, wherein the same rule was applied.

If the additional duties assigned are not germane to the basic job which the employee holds, he may

then in some instances be permitted to receive additional compensation. This was held to be the case in *State v. Granite Co. Commissioners*, 23 Mont. 250, where the State Supreme Court upheld the right of a county surveyor to receive additional compensation where the legislature imposed additional duties which were not germane or akin to the basic duties of county surveyor. See also 159 A.L.R. 606, and 43 Am.Jur., Public Officers, Sections 362, 363, pp. 150, 151.

Authorities are generally agreed that an officeholder should be assigned duties which will keep him reasonably busy. If additional work remains, additional job classifications should be established to handle this work and the necessary people employed to perform the work. As stated in 1 Dillon on Municipal Corporations, 5th Ed., p. 739:

“ . . . To allow changes and additions in the duties properly belonging or which may properly be attached to an office to lay the foundation for extra compensation, would introduce intolerable mischief. The rule, too, should be rigidly enforced. The statutes of the legislature and the ordinances of our municipal corporations seldom prescribe with much detail and particularity the duties annexed to public offices; and it requires but little ingenuity to run nice distinctions between what duties may and what may not be considered strictly official; and if these distinctions are much favored by courts of justice, it may lead to great abuse.”

The applicability of provisions of the Montana Constitution prohibiting varying the salary of public officials is not defined in this opinion inasmuch as the Montana Liquor Control Act defines the salary maximums of its employees in unambiguous terms, and the authorities herein cited are not limited to construing constitutional provisions.

It is therefore my opinion that the Liquor Control Board can not assign additional duties to their employees, which duties are germane

to their basic employment, and thereby avoid the salary maximums established by the legislature in the Montana Liquor Control Act.

The consideration and opinion given in answer to your first question are also applicable to question number three. Likewise, the authorities and opinion given in answer to your second query are applicable to question number four.

Section 4-115, R.C.M., 1947, provides that:

“The sale of liquor at each state liquor store shall be conducted by a person appointed under this act to be known as a ‘vendor’, who shall, under the directions of the board, be responsible for the carrying out of this act, and the regulations made thereunder, so far as they relate to the conduct of such store and the sale of liquor thereat.” (Emphasis Supplied)

Section 4-102, R.C.M., 1947, defines “vendor” as follows:

“(u) ‘Vendor’ means a person appointed as a vendor under this act;”

Section 4-112, R.C.M., 1947, in defining the functions, duties and powers of the Liquor Control Board, states that the Board has the power:

“(g) To appoint vendors . . . and to dismiss the same, fix their salaries or remuneration, assign them their title, define their respective duties and powers, . . .”

Although the letter “a” can be used in many different manners and is defined in Webster’s New International Dictionary, 2nd Ed., as an “indefinite article”, it is readily apparent from Section 4-115, supra, that it was the intent of the legislature that the Liquor Control Board should appoint “a person”, “a” therein meaning “one”, as vendor for “each state liquor store”. Although “a” can be used to denote either “one” or “any”, it is usually intended to denote an individual object or quality. It would be cumbersome and inefficient to have more than one vendor

in charge of a particular store. Indeed it has never been the practice of the Liquor Control Board to do so since the act's passage in 1933. In *Holt v. Sather*, 81 Mont. 442, 264 Pac. 108, our Supreme Court quoted affirmatively the following rule from 36 Cyc. 1139:

" . . . 'On the principle of contemporaneous exposition, common usage and practice under the statute or a course of conduct indicating a particular understanding of it will frequently be of great value in determining its real meaning, especially where such usage has been acquiesced in by all parties concerned and has extended over a long period of time.' . . ."

It is therefore my opinion that only one vendor can be appointed by the Liquor Control Board for each state liquor store.

Section 4-152, R.C.M., 1947, provides that:

"No vendor, and no person acting as the clerk or servant of or in any capacity for any vendor, shall sell liquor in any other place or at any other time or otherwise than as authorized by this act and the regulations."

As previously set forth in this opinion, " . . . the Liquor Control Board may define duties and job classifications of its employees, limited only where the legislature has specifically defined such duties. Section 4-152, supra, is merely an example of a delegation of such duty to the Board by the legislature. Since there can be but one vendor for each state liquor store, the Board must then by rule and regulation consistent with Section 4-152, supra, designate other employees to assist the vendor. Although Section 4-152, supra, refers to a person " . . . acting as the clerk or servant of or in any capacity for any vendor . . . ", numerous other sections of the Montana Liquor Control Act refer to the authority and duty of "the vendor". Since Section 4-108, supra, specifically sets forth the classification of "assistant vendor", it is apparent that the legislative intent of Section 4-152, supra, can best be followed by a

"clerk or servant" designated as an "assistant vendor". As stated in the case entitled *State ex rel. Williams v. Kamp*, 106 Mont. 444, 78 Pac. (2d) 585:

"In construing a statute, the intention of the legislature is the controlling consideration, and, to ascertain the reason and meaning of particular provisions of doubtful meaning, courts may resort to the history of the times and the cause or necessity influencing the passage of the Act."

It is therefore my opinion that Section 4-152, supra, and Section 4-108, supra, constitute an expression of legislative intent authorizing the Liquor Control Board to adopt rules and regulations whereby assistant vendors can assist vendors in performing the duties of the vendor.

Section 4-108, supra, sets forth the salary maximums to be paid various classes of employees of the Liquor Control Board. After establishing salary maximums for "vendors" and "any other employee", the section states that:

" . . . The volume of the individual sales shall be taken into consideration in fixing the salary of store vendors, assistant vendors, and employees."

The Montana Liquor Control Act, as originally passed in 1933, did not contain salary limits but rather gave the Liquor Control Board unlimited power to fix the salaries or remuneration of its employees. See Chapter 105, section 8 (g), Laws of 1933. In 1937, (Chapter 30, Laws of 1937) the legislature amended the salary provision of the Act and set a maximum of \$3,000.00 per annum on the liquor store employees without defining any class of employee. Under this amendment, the Board by rule adopted three salary brackets for liquor store employees—that of "vendor", "assistant vendor" and "other employee". This prevailed until 1947 when the legislature in Chapter 243, Laws of 1947, established the general salary provisions in effect at the present time. The Title of that Act reads:

"An Act to Amend Section 2815.63, Revised Codes of Montana, 1935, As Amended By Section 1, Chapter 30, Laws of 1937, Relating to the Fixing of the Compensation of the Members of the Montana Liquor Control Board, and Fixing the Salaries of Administrator, Assistant Administrator, Chief Accountant, **Vendors, Assistant Vendors, Employees,** and Department Heads." (Emphasis Supplied)

Both the Title of the Act and the wording of the statute specifically mention "assistant vendors" as a class of employee. If language of a statute needs construction, resort may be had to its title as an aid. State ex rel. Board of Com'rs of Valle County v. Bruce, 106 Mont. 322, 77 Pac. (2d) 403. Chapter 243, Laws of 1947, was a legislative recognition that vendors, including assistant vendors, were paid under a different maximum than "other employees". I have ruled that assistant vendors "... can assist vendors in performing the duties of the vendor.", and such ruling is in harmony with legislative intent as expressed in Section 4-108, supra, wherein the assistant vendor is specifically mentioned. Clearly, the classification of assistant vendor has no salary limitation except that of the vendor. Further, there is no limitation of how many assistant vendors may be provided in any store by the Liquor Control Board.

It is therefore my opinion that the Liquor Control Board may appoint any number of assistant vendors in each state liquor store, and they must be paid under the salary schedule in use for "vendors" and not under the salary classification for "other employees".

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