

**Opinion No. 90****Clerk of the Court—County Treasurer—Salaries—Section 25-608—  
Section 25-609—Chapter 22, L. 1957**

**Held: An incumbent clerk of the court must receive the salary set by the county commissioners in September of 1955 for his entire term and cannot receive the increase salary granted a newly elected county treasurer by Chapter 22, Laws of 1957.**

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December 24, 1958

Mr. E. Gardner Brownlee  
Ravalli County Attorney  
Hamilton, Montana

Dear Mr. Brownlee:

You have requested my opinion on the following question:

"The newly elected county treasurer will take office in January of 1959 and will receive an increase in salary provided by Chapter 22, Laws of 1957, Section 25-608, RCM, 1947, provides that the salary of the county treasurer and the clerk of the court shall be the same. The incumbent clerk of the court's term does not expire until January of 1960. In view of Section 25-608, supra, is the clerk of the court entitled to the same salary as the newly elected treasurer?"

The clerk of the court must receive the same salary for the entire period for which he was elected for three reasons:

First, Article V, Section 31, Montana Constitution, provides in part:

“. . . no law shall extend the term of any public officer, or increase or diminish his salary or emolument after his election or appointment . . .”

This constitutional provision is not violated if the law authorizing the increase or decrease of an officers salary was enacted **before** the official had taken office. *State ex rel. Jaunotte v. Zimmerman*, 105 Mont. 464, 73 Pac. (2d) 548 and 24 Opinions of the Attorney General, Opinion No. 14. In the instant case, Chapter 22, Laws of 1957 was enacted **after** the incumbent clerk of the court had assumed his office. Thus, Article V, Section 31, *supra*, would prohibit this person from receiving an increase under the provisions of Chapter 22, Laws of 1957.

In 23 Opinions of the Attorney General 318, Opinion No. 118, consideration was given Chapter 177, Laws of 1949 which increased the salary of county officials.

The clerk of the court in question was elected in 1948. The opinion stated:

“. . . Section 31 of Article V of the Constitution of Montana prohibits the salary of the clerk of the District Court from being increased or decreased by any law enacted by the Legislature **after** January 1, 1949.” (Emphasis added.)

Second, Section 25-609, RCM, 1947, as amended by Chapter 222, Laws of 1953, provides in part:

“In September of any year in which the . . . clerk of the district court is to be elected the county commissioners shall, by resolution, fix the salaries of the officials to be elected in conformity with the schedule in Section 25-605. Salaries so fixed shall apply during the entire term for which the foregoing officials are elected and should a vacancy occur, the person appointed or elected to fill the unexpired term in the office vacated shall receive the same salary as the person vacating the office.”

The last sentence of Section 25-609, *supra*, was repealed by Chapter 177, Laws of 1949. Section 2 of this act provided in part:

“. . . If a vacancy occasioned by death, resignation or otherwise should occur in any of the public offices listed in Section 1, after this act takes effect, the person elected or appointed to fill such vacancy shall be entitled to receive the salary therefor set out in Section 1 of this act.”

However, Chapter 222, Laws of 1953 amended Section 25-609, *supra*, and re-enacted the former provision requiring the salaries so fixed to apply during the entire term for which the official was elected.

Thus, the salary established by the county commissioners in September of 1955 for the clerk of the court cannot be subsequently altered by any change in the population or taxation values of the county. In 24 Opinions of the Attorney General, Opinion No. 14, the opinion referring to this restriction stated:

“. . . Thus, it was impossible for a county officer's salary to be changed during his term by changing the classification of the county . . .”

You have cited 24 Opinions of the Attorney General, Opinion No. 114, as authority for granting the increase to the clerk of the court. This opinion is not applicable since Chapter 222, Laws of 1953, was enacted subsequent to this opinion and the amendment required the salaries to remain fixed for the entire term.

Third, Section 25-609, RCM, 1947, as amended by Chapter 222, Laws of 1953, *supra*, only authorizes the county commissioners to set the salaries of "officials to be elected." This is consonant with the restriction that the salary established by the commissioners apply during the term of the elected official. The clerk of the court is not elected until November of 1959 and the commissioners have no authority to alter the salary of this officer.

Section 25-608, *supra*, would appear to require that the clerk of the court and the treasurer always receive the same salary. However, this provision was construed in 22 Opinions of the Attorney General 244, Opinion No. 152. There the clerk was elected and the treasurer had two years remaining in his term. The population and taxation values of the county had altered since the treasurer's salary had been set. The clerk of the Court was granted an increase but a similar increase was denied the incumbent treasurer. The opinion concluded:

“. . . the salary of the county attorney and the salary of the clerk of the district court who were elected in November of 1948, must be set by the method laid down in Chapter 150 already cited with reference to the salary which would have been paid to the county treasurer if said treasurer had been elected this year.”

The cited opinion clearly demonstrates that the clerk of the court and the treasurer will not always have the same salary. The provision of Section 25-608, RCM, 1947, may only apply if the increase or decrease in the clerk of court's salary does not violate the provisions of Article V, Section 31, Montana Constitution or the provisions of Section 25-609, RCM, 1947, as amended.

Therefore, it is my opinion that the incumbent clerk of the court must receive the salary set by the county commissioners in September of 1955 for his entire term and cannot receive the increased salary granted a newly elected county treasurer by Chapter 22, Laws of 1957.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General