

Opinion No. 91**Sheriff—Salary—Appointment to Unexpired Term—Article V, Section 26—Sections 25-606 and 25-609, RCM, 1947**

Held: The provisions of Section 25-606, RCM, 1947, do not violate Article V, Section 26 of the Montana Constitution. The appointee to fill the unexpired term of sheriff must receive the same salary as his predecessor for the remainder of the term as required by Section 25-609, RCM, 1947, as amended.

December 24, 1958

Mr. Russell C. McDonough
Dawson County Attorney
Glendive, Montana

Dear Mr. McDonough:

The sheriff of Dawson County who was elected in 1954 resigned and his successor for the unexpired term was appointed June 5, 1958. The salary of the elected sheriff was determined prior to his taking office by the county commissioners as provided in Sections 25-606 and 25-609, RCM, 1947. Section 25-609, *supra*, requires a person appointed to fill the unexpired term of an officer whose salary is determined by the commissioners to receive the same salary as his predecessor for the remainder of the term.

It is your contention that the appointee can receive the salary increase granted by Chapter 22, Laws of 1957, because the method prescribed by Section 25-606, RCM, 1947, of fixing the salary of a sheriff, violates Article V, Section 26 of the Montana Constitution.

Article V, Section 26, *supra*, enumerates some thirty-four subjects and forbids special legislation on these matters. The section concludes:

“. . . In all other cases where a general law can be made applicable, no special law shall be enacted.”

The purpose of this constitutional section is to prevent a disparity of laws relating to the same subject. *Arps v. State Highway Commission*, 90 Mont. 152, 164, 300 Pac. 549. The section does not prohibit the enactment of special laws altogether. It only disables a special law where a general can be made applicable. *State ex rel. Redman v. Meyers*, 65 Mont. 124, 129, 210 Pac. 1064.

In *Lowery v. Garfield County*, 122 Mont. 571, 586, 208 Pac. (2d) 478, the court stated:

“. . . A law is not local or special in a constitutional sense that operates in the same manner upon all persons in like circumstances. If a law operates uniformly and equally upon all brought within relation and circumstances for which it provides it is not a local or special law . . . a law (is) general and uniform

in its operation when it applies equally to all persons embraced within the class to which it is addressed, provided such classification is made upon some natural, intrinsic, or constitutional distinction between the persons within the class and others not embraced within it, but is not 'general' and it makes an improper discrimination if it confers particular privileges or imposes peculiar disabilities upon a class of persons arbitrarily selected from a larger number of persons all of whom stand in the same relation to the privileges or the disabilities imposed."

The basis for classifying a sheriff's salary is the population and taxable value of his county. In *State ex rel. Berthot v. Gallatin County High School District*, 102 Mont. 356, 361, 58 Pac. (2d) 264 the court stated that a classification according to population is reasonable and not violative of Article V, Section 26 of the Constitution. Section 16-2419, RCM, 1947, provides for the classification of counties based on the taxable levy. These are the same basis for determining a sheriff's salary under Section 25-606 and are a natural basis for classification.

In *Johnson v. Bankhead*, 232 Pac. (2d) 372, the Utah court affirmed a different salary for a county attorney in a class two county from that of a class three county. The court stated:

" . . . Article 6, Section 26, prohibiting special laws, (is) not violated because there are sufficient differences between the duties required to be performed by the various county attorneys of class 2 counties to justify a greater salary in some than in others . . ."

Similarly, there is a good deal of difference between the duties exercised by a sheriff in a county where the treasurers' salary is less than \$3000.00 and a county with a population in excess of 40,000. The intermediate class of sheriffs provides a range of duties that fluctuate between the smaller counties and the larger. The difference in functions is necessarily compensated by a proportionate salary.

Therefore, it is my opinion that the provisions of Section 25-606, RCM, 1947, as amended by Chapter 22, Laws of 1957, do not violate Article V, Section 26 of the Montana Constitution. The appointee to fill the unexpired term of the sheriff elected in 1954 must receive the same salary as his predecessor for the remainder of the term as required by Section 25-609, RCM, 1947, as amended.

Very truly yours,
FORREST H. ANDERSON
Attorney General