

Opinion No. 8

**CITIES AND TOWNS; Offices and Officers, Salary Increases—
SECTION 11-725, R.C.M., 1947—SECTION 11-732, R.C.M.,
1947—ARTICLE V, SECTION 39,
MONTANA CONSTITUTION.**

HELD: Salaries of city aldermen may be increased after they take office, if the ordinance providing such increase was passed before the beginning of the aldermen's present term of office.

July 18, 1963

Mr. Albert E. Leuthold
State Examiner
State Capitol
Helena, Montana

Dear Mr. Leuthold:

You have advised me that, in order to take advantage of the increased per diem for aldermen in cities of the first class authorized by Chapter 142 of the Laws of 1963, the Billings city council raised aldermen's salaries to fifteen dollars a day. This action was taken March 26, 1963. The present Billings aldermen took office May 6, 1963. However, because Chapter 142 of the Laws of 1963 is not effective until July 1, 1963, the aldermen have been receiving a salary of twelve dollars per diem, the present limit, under Section 11-725, R.C.M., 1947. They intend to increase their salaries, in accord with the ordinance, to fifteen dollars per diem on July 1, 1963. You wish to know if this may legally be done.

A nearly identical question was presented to the Montana Supreme Court in the case of **Broadwater v. Kendig**, 80 Mont. 515, 261 Pac. 264 (1927). There the mayor of Havre was reelected on the first Monday of April, 1926. At that time the mayor's salary was

\$600 per year. On April 22, 1926, the city council passed an ordinance increasing the mayor's salary to \$165 per month. Since city ordinances are not effective until thirty days after passage (Section 11-1106, R.C.M., 1947); this ordinance did not become effective until May 22, 1926. The mayor began his second term of office May 1, 1926.

The court held that the mayor was entitled to the increase. It held that Article V, Section 39 of the Montana Constitution, which provides that "No law shall extend the term of any public officer or increase or diminish his salary or emolument after his election or appointment," has no application to city ordinances, which fix the salary of city officers.

The only limitation on the salaries of city officers is Section 11-732, R.C.M., 1947, which provides:

"The salary and compensation of an officer must not be increased or diminished **during his term of office.**" (Emphasis supplied)

In **Broadwater v. Kendig**, *supra*, the court held that this statute does not prohibit salary increases by ordinance, if the ordinance was passed before the term of office commenced, even though the ordinance did not become effective until after commencement of the term. The court stated, at 80 Mont. 522:

"In our opinion it is the time of **the enactment** of the ordinance providing for a change of salary rather than the **effective date** which is controlling. A statute to take effect **in futuro** is a law **in praesenti**. An act has a potential existence upon its passage despite the fact that its effective day is postponed." (Emphasis by the Court)

In my opinion this decision of the Montana Supreme Court governs your question. The only apparent difference is that in that case the effective date of the ordinance was postponed because of the statute providing that no ordinance shall become effective until thirty days after its passage. Here the effective date of the ordinance is postponed because the statute allowing such an increase is not effective until July 1, 1963. This difference is of no legal

significance and it is therefore my opinion that Billings city aldermen may receive a salary of fifteen dollars per day after July 1, 1963.

Very truly yours,
FORREST H. ANDERSON
Attorney General