

VOLUME 31

Opinion No. 20

**COUNTY SURVEYORS; Salary and Compensation—Sections 25-605, 32-303, R.C.M. 1947.**

**HELD: County Surveyors in counties having a total registered vote of 15,000 or over are to be paid a salary determined in accordance with the formula prescribed by section 25-605, R.C.M. 1947.**

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July 13, 1966

Mr. Mark P. Sullivan  
 Silver Bow County Attorney  
 Butte, Montana

Dear Mr. Sullivan:

You have asked how the salaries of county surveyors in counties having a total registered vote of 15,000 or over are to be determined after December 31, 1966—the effective date of Chapter 197, Laws of 1965. The problem arises out of the following circumstances. Section 25-605, R.C.M. 1947, provides in part:

The salaries of . . . county surveyors in counties where county surveyors now receive salaries, as provided in section 32-303, Revised Codes of Montana, 1947, shall be based on the population and taxable valuation of the county in accordance with the following schedule:

\* \* \*

The total salary paid to . . . county surveyors in counties where county surveyors receive salaries, as provided in section 32-303, Revised Codes of Montana, 1947, shall be the sum of the salary shown in column A based on the population when added to the salary shown in column B based on taxable valuation, . . .

Section 32-303 was repealed, effective December 31, 1966, by section 12-109 of Chapter 197, Laws of 1965.

Thus, the legal question presented is: does the repeal of section 32-303 affect section 25-605 insofar as the former statute was adopted

by reference in the latter statute? The rule governing such cases was stated by our Supreme Court in **Gustafson v. Hammond Irrigation District**, 87 Mont. 217, 220 Pac. 640 (1930) as follows:

The rule is that "the adoption of a statute by reference is construed as an adoption of the law as it existed at the time the adopting statute was passed, and therefore is not affected by any subsequent modification or repeal of the statute adopted."

Referring to an earlier statute by reference in a later statute has the same effect as if the language of the statute referred to was set verbatim in the later statute. 50 Am. Jur., Statutes §38, p. 58. Obviously, if section 25-605 states that "county surveyors in counties having a total registered vote of 15,000 or over will receive the following salaries", no question would arise. The effect of referring to section 32-303 in the salary statute is, as stated above, merely a shorthand method of incorporating the language of that section into the salary statute and the subsequent repeal of section 32-303 has no effect upon the adopting statute (section 25-605). See **Gustafson v. Hammond**, supra; 50 Am. Jur. Statutes, §39, pp. 58-59; Annot., 168 ALR 627.

It is therefore my opinion that, after December 31, 1966, the salaries of county surveyors in counties having a total registered vote of 15,000 or over must be determined by applying the formula set out in section 25-605, R.C.M. 1947, as they have been determined before that date.

Very truly yours,

FORREST H. ANDERSON  
Attorney General

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