

STATE LIBRARY COMMISSION - Compensation of state librarians and assistants; Maximum amount set by legislative appropriation. Section 44-128, R.C.M. 1947, and Extraordinary House Bill No. 7, Laws of 1969.

HELD: State Library Commission may compensate director of library development in amount of \$17,500 per year when he is also temporarily performing duties and responsibilities of state librarian.

May 14, 1971

Mr. Morris L. Brusett
Legislative Auditor
State Capitol
Helena, Montana 59601

Dear Mr. Brusett:

I have your letter of April 13, 1971, which asks the following question in regard to the state library commission:

“Is it legally permissible for the State Library Commission to pay the Director of Library Development a salary of \$17,500 during the current year when the individual occupying that position has assumed and is performing the duties and responsibilities of the State Librarian, a position which is currently limited to salary compensation of \$12,500?”

It is important at this juncture to develop the factual situation which was set forth in your letter as it occurred from the spring of 1969 until August of 1970. Mrs. Longworth was the state librarian from the spring of 1969 to July 31, 1970. She was paid at the maximum level set forth in the appropriation act for the library commission.

Mr. Hoffman was employed in June of 1968 as coordinator of library development at a salary of \$12,000 per year, which was increased to \$13,500 per year. In the spring of 1970 the state library commission hired Mr. Hoffman as director of library development and acting state librarian, effective July 1, 1970, at an annual salary of \$17,500.

After the board of examiners refused Mr. Hoffman's salary increase in their June and July, 1970 meetings, the commission, on July 20, 1970, determined that Hoffman should continue as director of library development at an annual salary of \$17,500. The commission also determined that a search for a state librarian should continue, and in the

interim Mr. Hoffman would assume the responsibilities of the state librarian as well as the administration of the state library.

In August of 1970 the board of examiners approved the salary increase of Mr. Hoffman as director of library development. The salary increase was from \$13,500 to \$17,500 per year.

Section 44-128, Revised Codes of Montana, 1947, provides for the employment of a state librarian and for the compensation for that office, as well as assistants to the librarian. That section provided in part:

“The commission shall employ as its executive officer a librarian who shall be a graduate of an accredited library school, and who shall not be a member of the commission, for such compensation as the commission may deem adequate, and who shall perform the duties assigned by the commission, to serve at the will of the commission. The commission may also employ such other assistants as shall be required for the performance of the commission’s work . . .”

There is no provision which prohibits an assistant from assuming the duties of more than one office. This is important, since it is apparent from the commission’s actions that Mr. Hoffman is to act in his official capacity as the director of library development and also to temporarily administer the office of state librarian. It is important to note that, by official commission action on July 20, 1970, a search be continued to secure the services of a state librarian at a fixed salary of \$12,500.

The 1969 legislative assembly passed Extraordinary House Bill No. 7 to appropriate moneys to certain agencies for the 1971 biennium. That extraordinary house bill provided an appropriation for the library commission. Under the portion of the act for the library commission, subsection (4) provides a maximum salary for the state librarian of \$12,000 for the fiscal year ending June 30, 1970, and a maximum salary of \$12,500 for the fiscal year ending June 30, 1971. The intent of the legislature is clear that the office of state librarian shall be maintained by a person to be compensated at a maximum salary specified in Extraordinary House Bill No. 7.

The direction by the Montana state library commission, to Mr. Hoffman, as director of library development, to assume the responsibilities of the office of state librarian and the administration of the state library, is permissible. The commission is on record to continue its search for a person to fill the position of state librarian. It is incumbent upon the commission, upon securing the services of a state librarian, to pay the state librarian an amount not in excess of that set forth and provided by the legislature in the appropriation measure.

Therefore, it is my opinion that it is legally permissible for the state library commission to compensate the director of library development in the amount of \$17,500 per year, when that individual is also temporarily performing the duties and responsibilities of the state librarian, the latter position limited to an annual salary of \$12,500.

Very truly yours,

ROBERT L. WOODAHL
Attorney General