

**WATER RESOURCES BOARD - Director, salary of; OFFICES AND OFFICERS - Salary, increase above legislative appropriation when increased duties added. Extraordinary House Bill No. 4, Forty-first Legislative Assembly, 1969; Sections 89-103.2 and 89-103.3, R.C.M. 1947.**

**HELD:** The director of the water resources board may receive additional compensation above that specifically provided by the legislature when the water resources board places additional duties, not required by statute, upon the director.

September 15, 1971

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

Dear Mr. Brusett:

I have received your letter which asks the following question:

“Is the salary of the director of the Montana Water Resources Board limited to the amount provided for in the appropriation act, specifically \$12,600 for the 1969-70 fiscal year and \$13,200 for the 1970-71 fiscal year?”

Involved in your question is the authority of the Montana Water Resources Board to specify a salary for the director of the board in an amount greater than that provided for by the 41st legislative assembly of Montana.

Section 89-103.3, Revised Codes of Montana, 1947, providing for the salary of the director of the board, states:

“The salary of the director shall be in such amount as may be specified by the legislative assembly in the appropriation to the state water conservation board. If the legislative assembly does not specify the maximum salary for the director, it shall be fixed by the state water conservation board after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states and private industry.”

As you have stated in your letter, the 41st legislative assembly passed an act to appropriate moneys for certain state agencies for the biennium ending June 30, 1971. Section 4 of Extraordinary House Bill No. 4 provides:

“The salary of the chief administrator of each agency, commission, board or institution shall be determined by the appointing authority in accordance with the statutory provisions and, in no case, shall the salary determined exceed the amounts set out in this act for the agency.”

Extraordinary House Bill No. 4 specifically appropriated moneys from the general fund; the earmarked revenue fund, water conservation account; and from the federal and private revenue fund, water board account, for the water resources board. Paragraph 4 under the heading Water Resources Board, in EX H.B. 4, reads as follows:

“The head of this agency shall not receive a salary in excess of \$12,600 for the fiscal year ending June 30, 1970; and \$13,200 for the fiscal year ending June 30, 1971.”

EX H.B. 4 was approved on March 19, 1969.

The Montana Water Resources Board, in September, 1969, made it a duty of the director to be staff representative to the Pacific Northwest Regional River Basins Commission and the Western States Water Council. The board then increased the annual salary of the director to the sum of \$16,500, effective September 3, 1969. It is readily apparent that the increase in the director's salary was precipitated by the board's increasing the duties of the director.

Section 89-103.2, R.C.M. 1947, provides in part:

“The director shall be the chief administrative office (officer) of the state water conservation board and shall perform and execute in the name of the board all ministerial acts required of the state water conservation board by law and shall perform and execute such other duties as may be required by said board, . . .”

The Montana Water Resources Board has increased the duties of the director over those which were previously required by law and by previous acts of the board. The increased duties create increased responsibilities and should be rewarded by increased compensation.

There then appears to be a conflict between the provisions of EX H.B. 4, which specifically sets a maximum salary for the director, and the provisions of section 89-103.2, supra, which allows the Montana water resources board to impose additional duties upon the director. The Montana Supreme Court addressed itself to a similar situation in

**Anderson v. Hinman**, 138 Mont. 397, 357 P.2d 895 (1960), a case concerning increased responsibilities for the clerk of the supreme court. The Montana Supreme Court, in that decision, allowed additional compensation to the clerk for services rendered which were not provided by law. The court said, at page 412:

“The Clerk of the Supreme Court is paid a salary under Section 25-501, R.C.M. 1947, which is to compensate him ‘for all services required of him or which may hereafter devolve upon him by law.’ (section 25-501.1). This does not preclude him from receiving compensation for services he may provide which are not required by law. The general rule of law is stated in 67 C.J.S., Officers, p. 326, Sec. 88:

“ \* \* \* an officer is not obliged, because his office is salaried, to perform all manner of public service without additional compensation, and for services performed by request, not part of the duties of his office, and which could have been as appropriately performed by any other person, he may recover a proper remuneration.’ ”

I find no statutory requirement that the director of the Montana Water Resources Board act as staff representative to the Pacific Northwest Regional River Basins Commission and the Western States Water Council. These duties are ones that have been set forth for the director by the board and are not required by statute. I conclude that the instant situation is similar to the one presented in the **Anderson** case cited above.

THEREFORE, IT IS MY OPINION that the Montana Water Resources Board may increase the salary of the director above the maximum amount provided by the legislative appropriation when the board has also placed additional duties, not required by statute, upon said director.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General