

VOLUME NO. 34

Opinion No. 9

REAL ESTATE COMMISSION - Compensation of chairman; Commissioner of Agriculture, compensation of. Article XVIII, section 1, Montana Constitution, sections 3-103 and 66-1927, R.C.M. 1947.

HELD: Commissioner of agriculture may be compensated in an amount no greater than the maximum specified in the legislative appropriation for the department of agriculture

and also in the manner and amount as provided by section 66-1927 (c), R.C.M. 1947, when actually performing duties as chairman of the real estate commission.

July 7, 1971

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

Dear Mr. Brusett:

I have received your letter wherein you request my opinion on a matter pertaining to the salary paid the commissioner of agriculture who also acts ex-officio as the chairman of the real estate commission.

The commissioner of agriculture is a position provided for by the Constitution of Montana in Article XVIII, section 1, and whose compensation shall be as provided by law.

Section 3-103, Revised Codes of Montana, 1947, provides in part:

“... The commissioner shall receive an annual salary in such amount as may be specified by the legislative assembly in the appropriation to the department of agriculture...”

Each appropriation measure for the department of agriculture since the 1963 legislative session has provided for the salary of the department head, the commissioner, by line item, while limiting the amount to be received to a maximum figure. In 1965, the legislature limited the salary to \$10,000 per fiscal year, in 1967 to \$12,000 per fiscal year, and in 1969 for the current biennium, the amount of \$14,000 per fiscal year.

Section 66-1927, R.C.M. 1947, establishes the real estate commission and provides for compensation to its members. Subsection (c) of that statutory provision provides:

“(c) Each member of the commission shall receive as compensation for each one-half day or portion thereof actually spent on his official duties, the sum of seven dollars and fifty cents (\$7.50) and his actual and necessary expenses incurred in the performance of any other duties provided for by the commission.”

The commissioner of agriculture is named as the chairman of the real estate commission in subsection (a) of section 66-1927, R.C.M. 1947.

Therefore, as set forth above, it is apparent that the legislature intended that the commissioner of agriculture, ex-officio chairman of the real estate commission, be separately compensated for two duties and offices. The legislature has seen fit to compensate the commissioner of agriculture pursuant to constitutional and statutory authority by particular appropriation measures passed by the legislative assembly. The legislature, in 1963, passed the Real Estate Act, which created the real estate commission and provided for compensation of its members. Section 66-1927, R.C.M. 1947.

It appears from your letter that the Montana real estate commission has, from time to time, provided for compensation for its chairman at a rate other than as specified in section 66-1927 (c), R.C.M. 1947. I specifically refer to the commission's action of January 9, 1969, at which time the commission determined to compensate the chairman in the manner and amount of \$650 per month. This rate was to be later increased to \$700 per month on July 1, 1969. My research discloses no authority for the commission to compensate its chairman in that manner. The legislative intent is quite clear in section 66-1927 (c), R.C.M. 1947, that for every half-day actually spent on official duties, the chairman, as well as the other members of the commission, shall be paid the set sum of seven dollars and fifty cents (\$7.50) and actual and necessary expenses. It is imperative that the commission compensate its members according to the schedule enunciated by the legislature, for to do otherwise would be to emasculate the power and authority of the legislature to set, and limit, the manner and amount in which members of the commission are to be compensated.

Any change from the present statutorily prescribed manner and amount of compensation for the commissioners rests solely within the province of the legislature.

THEREFORE, IT IS MY OPINION that the commissioner of agriculture may be compensated at a salary no greater than the maximum amount specified by the legislative appropriation for the department of agriculture and in the additional manner and amount as provided by section 66-1927 (c), R.C.M. 1947, when actually performing official duties as chairman of the real estate commission.

Very truly yours,

ROBERT L. WOODAHL
Attorney General