

VOLUME NO. 35

Opinion No. 15

CONSTITUTIONAL LAW — County attorneys' salaries, how paid; COUNTY ATTORNEYS — Salaries, how paid. Article XI, section 3, Constitution of Montana, 1972; Transition Schedule, section 6, Constitution of Montana, 1972; section 25-601, R.C.M. 1947.

HELD: Upon implementation of the Constitution of Montana, 1972, July 1, 1973, the salaries of county attorneys shall be payable monthly, one-half from the general fund of the county and the other half from the state treasury, upon the warrant of the state auditor, as provided for in section 25-601, R.C.M. 1947.

June 19, 1973

Mr. Paul J. Murphy
Judith Basin County Attorney
P.O. Box 40
Stanford, Montana 59479

Dear Mr. Murphy:

You have requested my opinion on the following question:

Whether upon the implementation of the Constitution of Montana, 1972, the state will still pay one-half of the salary of the county attorney as presently provided for in Article VIII, section 19, Constitution of Montana, 1889.

Article XI, section 3, Constitution of Montana, 1974, provides:

(1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

The compensation of county attorneys will be provided by law under the new constitution. The new constitution does not provide for a half-payment of county attorneys' salaries by the state as did the old constitution.

Section 25-601, R.C.M. 1947, provides:

The salaries of the several county officers and their assistants must be paid monthly out of the general fund of the county, upon the order of the board of county commissioners, except the salary of the county attorney, which is payable monthly, one-half from the general fund of the county and the other one-half from the state treasury upon the warrant of the state auditor. The county commissioners of each county shall, within thirty (30) days after the election or appointment to fill a vacancy for any cause, of any county attorney, certify such election or appointment to the state auditor who shall thereafter draw warrants for such salaries in the same manner as for state officers. Provided, in case of a vacancy, the county commissioners shall immediately notify the state auditor, and the auditor shall compute the salaries due on the basis of said notification.

Section 6 of the transition schedule, Constitution of Montana, 1973, provides in part:

(1) The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations, and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution.

The provisions of section 25-601, *supra*, are presently in force and, thus, will carry over when the constitution takes effect on July 1, 1973.

You have also sought information on any changes in section 25-604, R.C.M. 1947. A review of legislation enacted by the Forty-third Legislative Assembly does not indicate any change in section 25-604, *supra*.

THEREFORE, IT IS MY OPINION:

The salaries of county attorneys shall be payable monthly, one-half from the general fund of the county and the other one-half from the state treasury, upon the warrant of the state auditor as provided for in section 25-601, R.C.M. 1947, when the Constitution of Montana, 1972, takes effect on July 1, 1973.

Very truly yours,

ROBERT L. WOODAHL
Attorney General