

VOLUME NO. 35

Opinion No. 32

COURTS — Judges, compensation other than annual salary; DISTRICT COURT — Judges, compensation other than annual salary. Article VII, sections 7 and 9, Constitution of Montana, 1972; section 93-303, R.C.M. 1947.

HELD: District court judges may not receive a fee for writing, research, and lecturing under programs funded by the Board of Crime Control.

October 5, 1973

Mr. Brinton B. Markle
Executive Director
Board of Crime Control
1336 Helena Avenue
Helena, Montana 59601

Dear Mr. Markle:

You have requested my opinion concerning the following question:

Whether Article VII, section 9, of the Constitution of Montana, 1972, prohibits paying a Montana district court judge a fee for writing a criminal justice manual, doing legal research, or delivering a lecture under programs funded by the board of crime control.

According to the facts as set forth in your letter, some of the programs funded by the board of crime control utilize district court judges to help carry out certain projects. These judges have delivered lectures, done legal research and written manuals for those involved in the criminal justice system. At times the district court judges helping to carry out a particular project have received a fee for their services over and above an allowance for actual necessary travel expenses.

Article VII, section 9, of the Constitution of Montana, provides in pertinent part:

(2) **No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.**

(3) Except as otherwise provided in this constitution, **no** supreme court justice or **district court judge shall** practice law during his term of office, **engage in any other employment for which salary or fee is paid**, or hold office in a political party. ... (Emphasis supplied)

Article VII, section 7, of the Constitution of Montana states that all judges shall be paid as provided in the statutes of Montana, and that the "salary" of district judges referred to in Article VII, section 9, supra, is set forth in section 93-303, R.C.M. 1947, which provides:

The annual salary of each district judge shall be twenty thousand five hundred dollars (\$20,500), beginning July 1, 1971.

The wording of Article VII, section 9, supra, appears to plainly prohibit the payment to a district court judge of any sort of fee or compensation whatsoever except "salary [as set forth in section 93-303, R.C.M. 1947] and actual necessary travel expense[s]". It prohibits a district court judge from engaging "in any other employment for which salary or fee is paid".

The payment, therefore, by the board of crime control of a compensatory fee to certain Montana district court judges for their work and assistance in the criminal justice system of the crime control board is improper and specifically prohibited by Article VII, section 9, supra.

THEREFORE, IT IS MY OPINION:

Article VII, section 9, of the Constitution of Montana, 1972, prohibits paying a Montana district court judge a fee for writing a criminal justice manual, doing legal research, or delivering a lecture under programs funded by the board of crime control.

Very truly yours,

ROBERT L. WOODAHL
Attorney General