

VOLUME NO. 38

OPINION NO. 45

MUNICIPAL CORPORATIONS - Officers and employees, salary increases for;  
OFFICES - Municipal officer's salaries;  
SALARIES - Municipal officers, increased during term of office;  
STATUTES - Construction of amendatory acts;  
MONTANA CODE ANNOTATED - Sections 1-2-207, 7-4-4201;  
REVISED CODES OF MONTANA, 1947 - Section 11-732.

HELD: Section 7-4-4201, MCA, as amended by chapter 221, 1979 Laws of Montana, does not prohibit a city council from increasing the salary of a municipal officer during the officer's term of office. Accordingly, the salary of a municipal officer may be increased during his term.

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Gentlemen:

You have requested my opinion on the following question:

Whether the salary and compensation of a municipal officer may be increased during his term of office.

Section 7-4-4201, MCA, is the statute that defines the authority of the city or town council with respect to the salaries and compensation of city officers and employees. Prior to the recent recodification this matter was dealt with in several separate statutes, including section 11-732, R.C.M. 1947, which provided:

The salary and compensation of an officer must not be increased or diminished during his term of office.

In Broadwater v. Kendig, 80 Mont. 515, 522, 261 P. 264 (1927), the Supreme Court interpreted the precursor to section 11-732, R.C.M. 1947, to prohibit a council from changing an officer's salary where the change is adopted and is effective during the officer's current term. The provision had that meaning when it was carried over into the Montana Code Annotated as section 7-4-4201(2).

The 1979 Montana Legislature enacted three pieces of legislation dealing with section 7-4-4201, MCA. The first, House Bill No. 276, was entitled:

An act to consolidate the provisions relating to the fixing of municipal salaries; permitting the fixing of salaries by ordinance or resolution; and deleting the provision that a municipal officer may not receive an increase or decrease in pay during a term of office; amending section 7-4-4201, MCA.

House Bill No. 276 became chapter 221, 1979 Laws of Montana, when it was signed by the Governor on March 22, 1979. Chapter 221 amended section 7-4-4201, MCA, to read:

The council shall determine by ordinance or resolution the salaries and compensation of elected and appointed city officers and all city employees.

Montana courts have long followed the rule that when the Legislature amends a statute it intends to make a change in existing law, and the courts will endeavor to give effect to the amendment. State ex rel. Dick Irvin, Inc. v. Anderson, 164 Mont. 513, 523-24, 525 P.2d 564 (1974). The interpretation of the statute as amended is governed by the intent of the Legislature, which is to be determined if possible from the plain meaning of the words used. Haker v. Southwestern Ry. Co., \_\_\_ Mont. \_\_\_, 578 P.2d 724, 727 (1978). It is clear from the title and substance of chapter 221, 1979 Laws of Montana, that the Legislature intended to change section 7-4-4201, MCA, by deleting the prohibition against increasing or diminishing a municipal officer's salary during the officer's term of office.

Chapter 221 was not the only enactment which dealt with section 7-4-4201(2), MCA, however. Both section 1, chapter 428, and section 26, chapter 443, 1979 Laws of Montana, also amended that statute. The former added a proviso that had the effect of allowing the city council to employ the city attorney on a contract basis to perform services not within the scope of his regular duties. The latter, merely a housekeeping measure, replaced the "must" in section 7-4-4201(2), MCA, with "may". Neither of these enactments mentioned the other, or chapter 221, and both dealt with section 7-4-4201(2), MCA, as though chapter 221 did not exist. The question is whether the enactment of chapters 428 and 443 had the effect of reviving the prohibition against changing a municipal officer's salary during his term of office, which was expressly deleted by chapter 221.

In my opinion, the prohibition could not be revived in that manner. First, the Legislature's express deletion of the prohibition in question from section 7-4-4201, MCA, was in effect a direct repeal of section 7-4-4201(2), MCA. No part of an act repealed by another act is revived by repeal of the repealing act without express words reviving such repealed part of an act. § 1-2-207, MCA. There is no language in either chapter 428 or chapter 443 indicating legislative intent to repeal chapter 221 and thereby revive subsection (2) of section 7-4-4201, MCA. As the Supreme Court noted in State v. Holt, 121 Mont. 459, 469, 194 P.2d 651 (1948). "It [is] not possible for the Legislature to put life into a dead statute by amendment of it." To the same effect, see Department of Revenue v. Burlington Northern Inc., 169 Mont. 202, 209, 545 P.2d 1083 (1976).

Nor did the enactment of chapters 428 and 443 repeal chapter 221 by implication. Where more than one act relating to the same subject are passed at the same session of the Legislature, there is a strong presumption against such repeal. State ex rel. Charette v. District Court, 107 Mont. 489, 495, 496, 86 P.2d 750 (1939).

It should also be noted that the code compiler has followed chapter 221, 1979 Montana Laws, in codifying section 7-4-4201, MCA. Accordingly, section 7-4-4201, MCA, now provides:

The council shall determine by ordinance or resolution the salaries and compensation of elected and appointed city officers and all city employees.

THEREFORE, IT IS MY OPINION:

Section 7-4-4201, MCA, as amended by chapter 221, 1979 Montana Laws, does not prohibit a city council from increasing the salary of a municipal officer during the officer's term of office. Accordingly, the salary of a municipal officer may be increased during his term.

Very truly yours,

MIKE GREELY  
Attorney General