

## Opinion No. 16-1812

June 3, 1916

**BY:** FRANK W. CLANCY, Attorney General

**TO:** A. G. Whittier, Traveling Auditor, Santa Fe, New Mexico.

**Method of figuring annual salary for a monthly containing 31 days.**

### OPINION

{\*376} I have your letter of even date herewith relative to making salary adjustments for county officials, as to which you say the question has arisen concerning the method of figuring the salary for a month containing thirty-one days. As to this you say that your office has considered a month as having thirty days, regardless of the actual number of days, but that some officers have taken exception to this and charged for the actual number of days.

In the first place all of the salaries of county officers, with {\*377} the exception of the surveyor, are annual salaries and are not monthly salaries. In figuring up how much of his annual salary any officer is entitled to for a fraction of the year, if we were to base it upon the number of days in that fraction of the year, we would be compelled to divide the annual salary by three hundred and sixty-five, and in leap years, by three hundred and sixty-six, to ascertain how much he would be entitled to for each day. This would introduce great difficulty and confusion in the adjustment of the accounts. A man with an annual salary of \$ 1800 would be entitled to \$ 4.93 and a fraction for each day. I do not suppose that the man who figures upon getting a little more money for a month containing thirty-one days, would be at all satisfied to be cut down proportionately for the month of February, which has only twenty-eight or twenty-nine days.

I find from a hasty examination, that the great weight of authority in the United States, in the absence of any statutory regulation, is to consider thirty days as a month or to hold that a month from a given day will go to the corresponding numerical day in the next month, and in some cases this would be over thirty days and in others, where February figures, it would be less. It is also the fact that in the absence of any other stipulation, authorities hold that a month means a calendar month. Now if for purposes of convenience the annual salary is divided into monthly installments, there would be twelve such installments in the year and that should be apportioned to each calendar month, but where there is a broken month, as in the case stated by you of a man taking the oath of office January 11, I think it would be quite correct, as you have done, to figure two-thirds of a month from that time to January 31. That this is in no way unfair is immediately perceptible when we reflect that he will get a full monthly installment of salary for the next month containing only twenty-eight days.

In banks a note dated January 20 and payable three months after date, falls due April 20, although the actual days are only eighty-nine, but if the note is made payable ninety days after date, then the actual days are counted.

I do not see that any better method could be adopted than the one which you have had in use.