

the Department of Welfare to the Board of Commissioners of Public Grounds and Buildings for its approval or disapproval.

Very truly yours,

DEPARTMENT OF JUSTICE,  
CLAUDE T. RENO,  
*Attorney General.*

E. RUSSELL SHOCKLEY,  
*Deputy Attorney General.*

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OPINION No. 337

*Legislature—Senators—Resignations—Elections to fill vacancy—Compensation of elected senator with respect to the year 1939—Constitution, Article II, section 8; Acts of June 24, 1919, P. L. 579; Act of May 28, 1937, P. L. 999.*

Senator Henney, representing the Forty-fifth Senatorial District, resigned December 23, 1938, and James G. Fulton was elected November 7, 1939 to fill the unexpired portion of Senator Henney's term and was sworn into office on December 12, 1939.

Senator Fulton is not entitled to any salary as State senator for the regular legislative session of 1939. If a special session should be called before the next regular session of 1941, Senator Fulton would be entitled to receive therefor the compensation provided by law with respect to special sessions of the legislature.

See Official Opinions of the Attorney General, 1913-1914, p. 355.

Also Official Opinions of Attorney General, 1905-1906, p. 115.

Harrisburg, Pa., April 5, 1940.

Honorable George F. Holmes, Secretary, Senate of Pennsylvania,  
Harrisburg, Pennsylvania.

Sir: You state that Senator Henney, representing the Forty-fifth Senatorial District, resigned December 23, 1938, and that James G. Fulton was elected, on November 7, 1939, to fill the unexpired portion of Senator Henney's term and was sworn into office on December 12, 1939.

You ask to be advised what compensation, if any, Senator Fulton is entitled to receive with respect to the year 1939 for his services as senator.

The compensation of members of the General Assembly is controlled by constitutional and statutory provisions.

Article II, section 8, of the Constitution provides as follows:

The members of the General Assembly shall receive such

salary and mileage for regular and special sessions as shall be fixed by law, and no other compensation whatever, whether for service upon committee or otherwise. No member of either House shall during the term for which he may have been elected, receive any increase of salary, or mileage, under any law passed during such term.

The compensation of members of the General Assembly is fixed by Section 1 of the Act of June 24, 1919, P. L. 579, as last amended by the Act of May 28, 1937, P. L. 999, (46 PS §4), which reads as follows:

The salary of the members of the General Assembly shall be three thousand dollars (\$3,000) for each biennial session, and mileage to and from their homes at the rate of five cents per mile circular for each week a member was in actual attendance at the session, to be computed by the ordinary mail route between their homes and the capital of the State. The salary of the members of the General Assembly shall be five hundred dollars (\$500), and mileage as aforesaid, for each special or extraordinary session lasting less than one calendar month, and seven hundred and fifty dollars (\$750), and mileage as aforesaid, for each special or extraordinary session lasting one calendar month or more, and no other compensation shall be allowed whatever, except one hundred and fifty dollars (\$150) in postage for each regular biennial session and fifty dollars (\$50) for each special or extraordinary session.

The General Appropriation Act of 1937 (Appropriation Acts of 1937, page 74) makes the following appropriation for the payment of the salaries of senators (page 98):

For the payment of the salaries of fifty Senators and extra compensation allowed by law to the President pro tempore of the Senate, session of one thousand nine hundred and thirty-nine the sum of one hundred thirty-eight thousand five hundred dollars (\$138,500).

The General Appropriation Act of 1937 provides that the salaries of the senators shall be paid as follows (page 97):

\* \* \* the salaries, stationery, and mileage of the Members of the Senate and House of Representatives, and all the salaries and mileage of the session officers and employes of the legislative session of one thousand nine hundred and thirty-nine, shall only be paid after statement of the amounts due the several Senators, Members, officers and employes shall have been certified to the Auditor General by the President pro tempore of the Senate and the Speaker of the House of Representatives, respectively, and that the Senators and Members, also the officers receiving fixed

salaries for said session shall each be paid one-fifth of his total salary each month for the first four months of the session, if the Legislature shall be in session that long, and the balance on the day fixed for the final adjournment of the Legislature or during the two days previous thereto \* \* \*.

It will be noted that the constitutional provision and the various legislative enactments mentioned above all provide for, or relate to, the payment of the salaries of senators for a regular or special session. In other words, the compensation of senators is for their services rendered during their attendance at a regular or special session of the General Assembly.

In a formal opinion rendered by former Attorney General John C. Bell to Honorable Thomas H. Garvin, then Chief Clerk of the House of Representatives, under date of April 19, 1913 (Official Opinions of the Attorney General—1913-1914, page 355), this department ruled that the estate of a member of the General Assembly who died during the session was entitled only to the proportionate part of his salary for which he served during the session; and that his successor, who was elected during the session, was entitled to receive only the compensation fixed by law for such services as were rendered by him on and after the date he qualified as a senator. The basis of that opinion was that the relation between a public officer and the government does not rest upon the theory of contract, but arises from the rendition of services. Thus, it is stated at page 357:

On the question of the legal rights of the members to receive the compensation provided by law, it is clear that the salary or compensation spoken of in the Constitution and the act of assembly above mentioned, is to be paid to the officers in question for actual services rendered by them.

The opinion also refers to a prior opinion of this department rendered by former Attorney General Carson, dated December 28, 1906, and reported in 33 Pa. C. C. 177, which exhaustively reviewed the nature of the office of a member of the General Assembly and the right of such member to receive the compensation provided by law. In the course of his opinion, former Attorney General Carson said (page 180):

It is also clear that the compensation spoken of in the Constitution and in the act of assembly is for services rendered, and it would follow that, if a member of either house died before the rendition of such services, or resigned, or became incapacitated, or for any cause was removed, he could not claim, nor could his estate-claim, payment for services not rendered,

Applying the above principles to the facts of the present case, it is at once apparent that Senator Fulton has rendered no services with respect to the regular legislative session of 1939, in that he was elected and qualified as a Senator long after that session terminated. Accordingly, it would be impossible for any compensation to be paid to Senator Fulton out of the appropriation made by The General Appropriation Act of 1937, for the simple reason that the procedure outlined in that act with respect to the payment of the salaries of senators could not be followed. As previously indicated, a senator is required to be paid "one-fifth of his total salary each month for the first four months of the session, if the legislature shall be in session that long, and the balance on the day fixed for the final adjournment of the legislature or during the two days previous thereto." This method of payment required by The General Appropriation Act of 1937 is a clear indication that the salary of a senator is to be paid only for the actual rendition of services during a session of the General Assembly, and that such payments are to be spread over the period of time, as previously indicated, during which the General Assembly actually is in session.

Accordingly, you are advised that Senator Fulton is not entitled to any salary as State senator for the regular legislative session of 1939. Of course, if a special session should be called before the next regular session of 1941, Senator Fulton would be entitled to receive therefor the compensation provided by law with respect to special sessions of the legislature.

Very truly yours,

DEPARTMENT OF JUSTICE,  
CLAUDE T. RENO,  
*Attorney General.*

E. RUSSELL SHOCKLEY,  
*Deputy Attorney General.*

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OPINION No. 338

*Weights and measures—Weightmasters' licenses—Restriction to single location—  
Act of July 19, 1935, sec. 6, as amended June 24, 1939.*

It is not lawful to place more than one location on weighmasters' licenses required under section 6 of the Act of July 19, 1935, P. L. 1356, as amended by the Act of June 24, 1939, P. L. 865.

Harrisburg, Pa., April 12, 1940.

Honorable William S. Livengood, Jr., Secretary of Internal Affairs,  
Harrisburg, Pennsylvania.