

Clerk of Court—Term of Office of One Appointed to Fill Vacancy.

A person appointed to fill the vacancy of one elected to the office of Clerk of the District Court at the general election in November, 1920, holds until the first Monday of January, 1923.

J. B. C. Knight, Esq.,
County Attorney,
Anaconda, Montana.

My dear Mr. Knight:

You have inquired when the term of office of Clerk of the District Court will expire for one appointed to fill the vacancy caused by the death of the regularly elected Clerk of the District Court of Deer Lodge County, elected at the general election of November, 1920. Article VIII, Section 34 of the Constitution of Montana reads as follows:

“Vacancies in the office of justice of the supreme court, or judge of the district court, or clerk of the supreme court, shall be filled by appointment, by the governor of the state, and vacancies in the offices of county attorneys, clerk of the district court, and justices of the peace, shall be filled by

appointment, by the board of county commissioners of the county where such vacancy occurs. A person appointed to fill any such vacancy shall hold his office until the next general election and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected."

In *State ex rel. Patterson v. Lentz*, 50 Mont. 322, 338, the Supreme Court, after quoting the above section and also referring to Section 450 of the Revised Codes of 1907 as fixing the general election on "the first Tuesday after the first Monday of November, in the year 1894, and in every second year thereafter," held that a judge of the District Court who had received his office by appointment could hold office, under the above provision, only until the first Monday of January after the next general election. The office of Clerk of the District Court being included with that of Judge of the District Court in the above constitutional provision, is controlled by the foregoing decision.

See, also:

State ex rel. Jones v. Foster, 39 Mont. 583;

State ex rel. McGowan v. Sedgwick, 46 Mont. 187;

State ex rel. Buckner v. Mayor of Butte, 41 Mont. 377.

Section 2960 of the Revised Codes of 1907 provides that the term of county officers, including the Clerk of the District Court, shall commence on the first Monday of January next succeeding their election.

It is therefore my opinion that the term of office of the person appointed to fill the vacancy in the office of Clerk of the District Court will expire on the first Monday of January, 1923.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.