

**County Treasurer—Election of Upon the Formation of
a New County as Constituting a Term of Office—Holding
Consecutive Terms.**

A person elected to the office of County Treasurer upon the creation of a new county, and thereafter elected at the next general election, is ineligible for re-election for another succeeding term for the reason that he would be holding office for more than two consecutive terms, contrary to Section 5 of Article XVI of the Constitution.

C. W. Noyes, Esq.,
County Attorney,
Ryegate, Montana.

My dear Mr. Noyes:

You have requested my opinion on the following question:

“Where a person was elected in June to the office of County Treasurer under the election of officers authorized on creation of a new county, and he was again elected in

November to succeed himself, is he disqualified from holding office after the expiration of the present term, or does the law contemplate two full terms."

Section 5 of Article XVI of the Constitution provides in part:

"There shall be elected in each county the following officers: * * * one treasurer, who shall be collector of taxes; provided, that no person shall hold the office of county treasurer for more than two consecutive terms."

It is suggested that this provision contemplates two full terms. If, however, the Treasurer in question should be elected for another term at the expiration of the present one, and hold office until that term expired, he would have held the office of Treasurer for more than two full consecutive terms, in contravention of the above provision.

In *Grossman v. State*, 106 Ind. 203, it was held that where an incumbent has held for the full period fixed he cannot by the Constitution hold over, but the office becomes vacant where his successor dies before qualifying.

It has also been held that where a constitutional provision prescribing the term of a public officer is uncertain or doubtful in its construction, that interpretation will be adopted which limits the term to the shortest time.

Mechem on Public Officers, Sec. 390;

Wright v. Adams, 45 Texas, 134.

It would seem, the incumbent having been elected on the creation of the county to the office of Treasurer to hold until the next general election, that this would constitute a term and that at the expiration of his present term he would be ineligible for a succeeding term. This has been the view of former Attorneys General in passing upon a similar question. See Vol. 5, *Opinions of Attorney General*, page 533; Vol. 4, *Opinions of Attorney General*, page 4. In these cases, however, the person was held to be disqualified by reason of appointment to fill an unexpired term, this being construed as a term within the meaning of the above constitutional provision.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.