

**Clerk of District Court—Elected to Fill Unexpired Term
—When to Take Office.**

A person elected to fill the unexpired term of a Clerk of the District Court is entitled to take the office immediately upon his election and qualification.

Elbert F. Allen, Esq.,
County Attorney,
Livingston, Montana.

My dear Mr. Allen:

I have your letter in which you have asked whether a person, who is elected to fill the unexpired term of a Clerk of the District Court, is entitled to take the office immediately after his election and qualification, or whether he is obliged to wait until the first Monday in January, the office being at present occupied by an appointee.

Section 34 of Article VIII of the State Constitution provides, in part, as follows:

“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 the case of *State ex rel. McGowan v. Sedgwick*, 46 Mont. 187, 190, 127 Pac. 94, the court said:

“In every instance of appointment to fill a vacancy in an elective office, unless an exception be made in the office of county commissioner, the Constitution specifically limits the tenure of the appointee to the next general election or until his successor is elected and qualified; and the phrase ‘until his successor is elected and qualified’ is literally construed by the Constitution itself, in the concluding sentence of section 34 of Article VIII: ‘A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected’; for, if an appointee holds for the residue of the term, then there could never be ‘a person elected to fill a vacancy’ if an appointment had been made. That sentence is intelligible only upon the theory that the appointee holds only until the next general election or until the person elected for the residue of the term qualifies.”

It is apparent, therefore, that the party who shall be elected is elected to fill out an unexpired term, and, in my opinion, he is entitled to take the office to which he is elected immediately upon his election and qualification.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.