

Opinion No. 306.

Elections—Offices and Officers—Consolidation of Offices—Qualifications—County Treasurer—County Superintendent of Schools—County Surveyor—County Assessor—Salary.

HELD: 1. The person who holds the consolidated office of county treasurer and county superintendent and discharges the duties thereof must possess the qualifications of each of the consolidated offices as prescribed by the Constitution and statute and he is likewise subject to the limitations of each.

2. Section 4835, R. C. M. 1921, being unconstitutional, the person elected to the consolidated office of County Assessor and County Surveyor need not possess the qualifications therein prescribed.

3. Where the office of County Surveyor and County Assessor are consolidated the salary fixed by law for County Assessor should be paid.

4. A consolidated office should be designated on the ballot by the names of the offices consolidated.

June 27, 1936.

Mr. Walter T. Murphy
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You have submitted the following:

"1. Must the person elected as County Treasurer after the office of County Superintendent has been consolidated with the office of Treasurer have the qualifications of County Superintendent prescribed by Chapter 118 of the Laws of 1929?"

Article IX, Section 10, of the Montana Constitution, provides: "All persons possessing the qualifications for suffrage prescribed by Section 2 of this article as amended and such other qualifications as the legislative assembly may by law prescribe, shall be eligible to hold the office of county superintendent of schools or any other school district office."

The legislature, by Section 950.1, provided: "No person shall be eligible to the office of County Superintendent of schools in any county of Montana, who, in addition to the qualifications required by the constitution of the State of Montana, is not the holder of a state certificate offered by the State of Montana, granted by endorsement upon graduation from a standard normal school, or college, or university; or who is not the holder of a certificate offered by the State of Montana designated as a certificate granted by examination in accordance with the rules and regulations as prescribed by the State Board of Educational Examiners; and who has not had at least three years successful experience as a teacher, principal or superintendent of public schools. The above qualifications shall not prohibit the re-election of present incumbents."

Since by the consolidation of offices as provided by Article XVI, Section 5, of the Montana Constitution, the offices consolidated are not abolished but "the powers and duties of said offices consolidated" are merely "combined" in one person, it is my opinion that the person who holds such consolidated office and discharges the duties thereof must possess the qualifications of each of the consolidated offices as prescribed by the Constitution and statute and he is likewise subject to the limitations of each. There is nothing in said Article XVI, Section 5, as amended by the vote of the people November 6, 1934, which expressly or impliedly indicates any intent to repeal or amend any constitutional or statutory provision providing qualifications for office and therefore they stand unaffected by such constitutional provision.

"2. Must the person elected to the office of Assessor after the office of County Surveyor has been consoli-

dated with the assessor's office have the qualifications prescribed by Section 4835 of the Revised Codes of 1921?"

For the reasons given in our opinion to County Attorney Farr, October 14, 1935, Section 4835, R. C. M. 1935, in so far as it attempts to add to the constitutional qualifications of a county surveyor, is unconstitutional and your question must therefore be answered in the negative.

"3. Would the incumbent of the assessor's office after the office of county surveyor is consolidated with it be entitled to receive \$7.00 per day as provided by Section 4921, Revised Codes of 1921?"

Article XVI, Section 5, provides: "* * * the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices."

Section 4749.7 reads: "When two or more offices are consolidated under a single officer such officer shall receive the highest salary provided by law to be paid to any officer whose duties he is required to perform by reason of such consolidation and shall give a bond in the same amount as would have been required of such officer."

Section 4921 provides: "The county surveyor is entitled to receive and collect for his own use the following fees: For services in making a survey required by any court, or upon the application of any person, the sum of seven dollars per day, to be paid by the person making the application, and if made for the county by order of the board of county commissioners, to be paid out of the contingent fund."

Since said Section 4921 mentions "salaries" and not "fees" and surveyors are not paid salaries, it is my opinion that where the offices of county assessor and county surveyor are consolidated the salary fixed by law for county assessor should be paid to the officer.

"4. How shall the title to the consolidated offices be designated on the election ballots? That is, should the office of County Treasurer be now simply called the office of County Treasurer, or should it be called

the office of County Treasurer and County Superintendent of Schools?"

Since no office is abolished by Article XVI, Section 5, of the Montana Constitution, by consolidation but the powers and duties of the two officers are merely combined and vested in one person, it is my opinion that such officer holds both offices and that both offices should be designated together on the ballot as "County Treasurer and County Superintendent of Schools" or vice versa.