

**Opinion No. 275.**

**Offices and Officers — County Commissioners—Consolidation of Offices—Qualifications.**

HELD: Candidates for consolidated offices must have the statutory qualifications required of both officers.

2. The constitution having prescribed the qualifications required of county officers, the legislature is without power to supplement them.

3. The method prescribed by Section 4749.1, R. C. M. 1935, for consolidation of constitutional offices applies only where consolidation is effected by petition, and does not conflict with the procedure by commissioners.

4. County Commissioners may, in their own discretion and on their own motion consolidate any two or more

offices enumerated in Sec. 5, Art. XVI, of the Montana Constitution by complying with Section 4749.1, R. C. M. 1935.

April 30, 1938.

Mr. Robert H. Allen  
County Attorney  
Virginia City, Montana

My Dear Mr. Allen:

You have asked for an opinion on the following questions:

1. When offices are consolidated must the person holding the consolidated office have the qualifications of both offices as set forth prior to consolidation?

2. Is Section 4835, Revised Codes of Montana, 1935, unconstitutional for the reason that it adds qualifications not specified in the Constitution?

3. When acting on their own initiative can the commissioners consolidate offices six months prior to the general election, or must they act seven months prior to the general election as provided in Section 4749.1, Revised Codes of Montana, 1935?

As you mention in your letter, questions 1 and 2 have been answered by previous attorney generals' opinions as found in Volume 16, Opinions of the Attorney General, pages 194 and 313, holding that: 1. Candidates for a consolidated office must have the qualifications of both offices as set forth by the statute. 2. That Section 4835 is unconstitutional, violative of Sections 2, 10, and 11 of Article IX, Montana Constitution. In those opinions I concur.

As to the third question, the power to consolidate offices is granted by the Constitution in the following terms:

"The board of county commissioners may in its discretion consolidate any two or more of the within named offices and combine the powers and duties of the said offices consolidated; however, the provisions herein shall not be construed as allowing one office incumbent to be entitled to the salaries or emoluments of two or more offices; provided further that in consolidating county offices the board of county commissioners shall, six months prior to the general election held for the purpose of electing

the aforesaid officers, make and enter an order, combining any two or more of the within named offices and shall cause said order to be published in a newspaper, published and circulated generally in said county, for a period of six weeks next following the date of entry of said order." (Section 5, Article XVI, Montana Constitution.)

Section 4749.1 providing that a petition in writing signed by 25% of the qualified electors of the county, requesting the consolidation of two or more constitutional offices, may be filed with the county commissioners, "any time not later than seven months before the date of any general election" applies only to the procedure when consolidation is effected by petition and does not conflict with the six months limitation prescribed by the Constitution when the commissioners themselves decide upon the consolidation.

It is my opinion that the commissioners, in their discretion and on their own motion, may consolidate any two or more of the offices enumerated in Section 5, Article XVI of the Montana Constitution by complying with the procedure outlined therein, and that Section 4749.1 is not applicable to such situation.