

It is apparent from the above quoted portion of Article XVI that if the enlistment in the navy of the elected officer results in a vacancy, then the acting officer and appointee holds office until the next general election.

Chapter 47, Laws of 1941, was passed by the legislature and its title recites:

"An act to provide for Reemployment of Elected Officers and Employees of the State of Montana and any Political Subdivision thereof, Who Shall Hereafter Serve in the Military Forces of the United States Upon Completion of Their Period of Training and Service; to Provide for 'Acting' Officers to Serve During Such Absence of Elected Officers; and Relating to Procedure to be Followed to Secure Such Reemployment."

Section 1 of Chapter 47 provides for the restoration to office of elected public officials and public employees after their military service. Section 7 provides for the appointment of "acting" officers during the absence of elected officers in military service and states in part:

"'Acting' officers so appointed shall be appointed for a period not to exceed the unexpired term of the officer whose duties he assumes and such appointment shall be subject to the right hereinbefore set forth of the elected officer to the restoration of his position."

Section 8 of Chapter 47 provides in part:

"It is specifically declared that the absence of such officer, caused by such military service, shall not create a vacancy in the office to which he was elected."

In the case of *Gullickson v. Mitchell*, 113 Mont. 359, 126 Pac. (2nd) 1106, our Supreme Court considered Chapter 47, Laws of 1941, and held that a permanent vacancy did not result when an elected officer is absent because of military service. The Court also said:

"Chapter 47 relating, as it does, to the temporary relief from duty, leave of absence, or suspension of an officer, with his assent, rather than to a permanently vacated office, there is no valid objection to the appointment's continuing beyond an election; for as pointed out in the

Opinion No. 219.

**Military Service—Officers and Offices
—Vacancies.**

Held: The term of office of an acting public official who was appointed to office during the absence in military service of the elected officer is for the unexpired term of the elected officer. A permanent vacancy of the office does not occur by the induction into military service of an elected officer.

June 10, 1944.

Mr. E. F. Bunker
County Attorney
Gallatin County
Bozeman, Montana

Dear Mr. Bunker:

You have requested my opinion concerning the term of office of an acting public administrator who was appointed to the office upon the elected public administrator's joining the armed forces. You ask specifically if the appointed officer holds office until the next general election or for the unexpired term.

Section 5, Article XVI of the Montana Constitution as amended provides in part:

"Vacancies in all county, township and precinct offices, except that of county commissioners, and the appointee shall hold his office until the next general election . . ."

Florida case, *supra*, the two classes of situations are entirely different. The whole legislative intent of Chapter 47 was to permit the person elected to obtain 'restoration to his office,' whether or not an election might intervene, and to permit the appointee to hold office 'for a period not to exceed the unexpired term,' regardless of an intervening election, subject to the elected person's right of restoration to his office."

It is apparent from the above quotation that the intervening election does not alter the term of an acting officer and under the rule of *Gullickson v. Mitchell*, *supra*, no vacancy is created within the meaning of Section 5, Article XVI of the Montana Constitution. (See also Opinion No. 443, Volume 19, Report and Official Opinions of the Attorney General.)

It is therefore my opinion the term of office of an acting public official who was appointed to office during the absence in military service of the elected officer is for the unexpired term of the elected officer.

Sincerely yours,
R. V. BOTTOMLY
Attorney General