

VOLUME NO. 36

Opinion No. 95

CONSTABLES — No longer elective office; CONSTABLES — When final elective term expires; Chapter 253, Laws of 1975; Title 16, Chapter 24, Title 16, Chapter 51, R.C.M. 1947; Sections 16-2406, 16-5115, R.C.M. 1947.

HELD: The Yellowstone County Constables' elected terms will expire on December 31, 1976, regardless of whether or not an alternative form of government is selected. At that time the commissioners will have the discretion to appoint to the position or leave it vacant.

August 18, 1976

Mr. Harold Hanser
Yellowstone County Attorney
Courthouse
Billings, MT 59101

ATTN: Mr. C.W. Jones

Dear Mr. Hanser:

You recently requested my opinion as to when a county constable's term expires in light of Title 16, Chapter 24 and Title 16, Chapter 51, R.C.M. 1947.

Prior to 1975, constables were considered township officers and were elected to four year terms at regular county elections. In 1975, however, the legislature enacted Chapter 253, Laws of 1975, which was entitled:

AN ACT TO DELETE THE TOWNSHIP TERRITORIAL LIMITS ON CONSTABLES; TO REQUIRE THE BOARD OF COUNTY COMMISSIONERS TO SET SALARIES FOR CONSTABLES; TO MAKE CONSTABLES APPOINTED COUNTY OFFICERS...

In essence, the act made the position of constable a discretionary appointed position rather than an elected office. This is evidenced by section 3 of the act which added the following paragraph to section 16-2406, R.C.M. 1947:

The commissioners may appoint, at their discretion, constables, but not more than one (1) constable for each justice of the peace court.

The clear intent of this act is that when a constable's elected term expires, the commissioners could either appoint a constable to serve at their pleasure, or leave the position vacant. It is my understanding that the terms of the present constables in Yellowstone County ordinarily would expire on December 31, 1976.

I use the term "ordinarily" inasmuch as this is not an ordinary year for county officers or employees. Section 16-5115.13, R.C.M. 1947, in the chapter on Local Government Study Commissions, provides in part as follows:

(1) No primary or general election shall be held in 1976 for the election of county officials. The primary and general election for electing city, town, and county officials shall be rescheduled as provided in this sections.

(5) If a new alternative form of local government is adopted, all elected city, town, and county officers shall hold their respective offices until the new successors are elected and qualified...

(6) If the existing form of local government is retained, all elected city, town and county offices shall hold their respective office until the new successors are elected and qualified...

It is evident that the above provisions do not apply to the position of constable since it is now appointive, and will not have a new successor "elected and qualified". If the proposed new form of government is disapproved by the voters, section 16-5115.11(1), R.C.M. 1947 provides as follows:

(1) If the electors disapprove the proposed new form of local government, the local government shall retain its existing form as specified in section 16-5115 and the report of the commission.

There is no doubt that if the existing form of government is retained, the term of the constables in question would expire on December 31, and the commissioners could then appoint to fill the position. If an alternative form of government is chosen, section 16-5115.12(2), R.C.M. 1947 provides:

(2) All other employees holding offices or positions, whether elective or appointive, under the government of such county, city, or town on May 2, 1977, shall continue in the performance of the duties of their respective offices and positions until provision is made for the performance or discontinuance of such offices or positions.

As stated earlier, section 16-5115.13, *supra*, does not apply to the position of constable. Section 16-5115.12(2), *supra*, has nothing to extend the elected term of a constable. In other words, even if an alternative form of government is adopted, the last elected term of the constables will expire on December 31, at which time the commissioners can appoint. The May 2, 1977 election will have no effect on the position of constable.

THEREFORE, IT IS MY OPINION:

The Yellowstone County Constables' elected terms will expire on December 31, 1976, regardless of whether or not an alternative form of government is selected. At that time the commissioners will have the discretion to appoint to the position or leave it vacant.

Very truly yours,

ROBERT L. WOODAHL
Attorney General