

**Officers, Appointment Of. Vacancy.**

Under the provisions of Sec. 7, Art. 9 of the Constitution of the State, no person is qualified to be elected or appointed to any office who is not a citizen and who shall not have resided in the State at least one year next before his election or appointment. In the event of a vacancy thus occurring because of ineligibility of a person appointed to the position of county attorney, the board of county commissioners may declare a vacancy in the office and make appointment.

Helena, Montana, Mar. 1st, 1906.

H. C. Shultz, Esq., County Attorney, Plains, Montana.

Dear Sir:—We are in receipt of your favor of the 23rd ult., and also letter from C. H. Rittenour, Chairman of the Board of County Commissioners of Sanders County of same date, in both of which requests for opinion are made respecting your eligibility to the office of County Attorney of the new county of Sanders.

It appears that under the provisions of the act creating Sanders County, (Chap. 9, Laws of 1905), which law, under its provisions, become operative as a law on this day, that you were appointed to the position of county attorney for said county. The act in question was approved on February 7th, 1905, and at that time you had been a resident of the state less than one year, but at this time your residence dates back for at least one year and a half.

The questions arising, are:

First: Were you eligible for appointment to the office at the time of the passage of the act?

Second: If not then eligible, since the act was not to become a law until more than one year from the date of its passage, are you now eligible?

The main question included in both of the above, of course, is, "at what time must an officer be eligible for an office,—at the time of his appointment or election, or at the time of his qualification?"

Section 7 of Article 9 of our State Constitution provides:

"No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States, and who shall not have resided in the state at least one year before his election or appointment."

This constitutional provision seems about as plain as words can express an idea. The provisions of the constitution being amendatory and prohibitory, (Sec. 29, Art. 3), it seems quite clear that the citizenship and residence qualification for an office must exist at the time of the election or appointment. And such have been the holdings of the courts under similar constitutional provisions. See *State v. McMillan*, 23 Neb. 385; *Parker v. Smith*, 74 Am. Decs., 749; *Privet v. Bickford*, 26 Kan. 52.

See also *State v. Murray*, 96 Wis. 28; *State v. Trumpf*, 50 Wis. 103.

The first regular meeting of the board county commissioners under the law will be held the first Monday of this month, (March), (Sec. 4220,

Pol. Code), and at that meeting I would advise the board to declare the office of county attorney vacant because of your ineligibility under the constitution at the time of your appointment, and to immediately proceed to fill the vacancy (Sub. Div. 19, Sec. 4230). Since you are now entirely qualified to fill the position, there can be no objection to the board naming you as their appointee to fill the position, and such appointment by the board, so made, will date, with respect to your residence, from the time they make the appointment.

Yours respectfully,

ALBERT J. GALEN,

Attorney General.