

Coal Mine Inspector, Appointment and Term of Office of. Office, Term of for Coal Mine Inspector. Office, Fixing Term of in Appointment. Office, Vacancy in by Operation of Law.

Section 1679, providing for the appointment of a coal mine inspector, fixes his term, and does not provide that he shall

hold until his successor is elected and qualified. Therefore, at the expiration of his term there is a vacancy by operation of law. In appointing his successor, he must be appointed for the balance of the next four year term, as the appointment power has no authority to appoint him for a shorter period.

Helena, Montana, December 9, 1909.

Hon. Edwin L. Norris,
Governor,

Helena, Montana.

Dear Sir:

I am in receipt of your communication of December 8, requesting an opinion upon the following propositions:

1. "Does the term of office of the state coal mine inspector, appointed under the provisions of the Act of 1901, extend beyond that for which he was appointed?"

"2. In appointing a state coal mine inspector, have I the authority to fix the term of office of the appointee for a period less than that provided for by statute?"

Section 1679 provides for the appointment of a state coal mine inspector by the governor, and fixes his term, and further provides that he shall hold the office for a term of four years from the date of his appointment, unless otherwise removed by the governor.

As this law does not also provide that he shall hold until his successor is elected and qualified, it follows that there is a vacancy, by operation of law, at the expiration of the four years from the date of his appointment.

See the case of *State, ex rel. Jones v. Foster*, decided by the supreme court of Montana on November 8, 1909, and not yet reported. (104 Pac. 860.)

However, until such time as the governor sees fit to make an appointment to fill such vacancy, the officer whose term has expired continues to discharge the duties of his office, as provided in section 355, revised codes. But said section 355 does not prohibit the governor from making an appointment to fill such vacancy at any time after the vacancy occurs.

See *State, ex rel. Jones v. Foster*.

Section 5, of chapter 64, laws of 1909, provides for the filling of vacancies in the office of coal mine inspector, and said section expressly states that:

"The governor shall fill the same, by appointment, for the unexpired term."

The unexpired term of the office of coal mine inspector would be the balance of the four years, which began to run at the expiration of the termination of the last four year term.

In the face of this provision of the statute, it would seem that there is no authority to appoint a person to said office for a shorter period than the unexpired term.

See 29 Cyc. p. 1397, where the law is stated as follows:

"A term fixed by statute may be changed only by statute.

An incorrect statement as to the term in a bill, or commission of appointment, or an official bond, will not change the term from that which has been prescribed by statute with reference to the office."

People v. Case, 19 N. Y. Supp. 625;

State v. Chapin, 11 N. E. (Ind.) 317.

You are therefore advised that, in our opinion, there is now a vacancy in the office of state coal mine inspector, which you have authority to fill at any time, and that the person appointed to fill such vacancy will hold for the unexpired term, beginning on the date such vacancy occurred.

Very truly yours,

ALBERT J. GALEN,

Attorney General.