

Towns, Qualifications of First Officers in Newly Incorporated. Officers, Qualification of in Newly Incorporated Town. Officer, Liability for Premium of Official Bond. Bonds of Officials, County Not Liable for Premium.

1. The qualifications for mayor and aldermen of cities and towns cannot apply to the officers first elected in a newly incorporated town, which town has not been in existence for a period of two years.

2. Where a county officer procures an official bond from a surety company he cannot require the county to pay the premium on such bond.

Helena, Montana, April 12, 1910.

Hon. J. H. Stevens,
County Attorney,
Kalispell, Montana.

Dear Sir:

I am in receipt of your letter of April 11, requesting an opinion upon the following questions:

"1. The lots in the government townsite of Polson were sold in September last to the public; theretofore what is now Polson was a part of the Flathead Indian reservation; on April 5th the voters at Polson voted in favor of incorporating the town of Polson. The question now arises as to what length of residence is required of the prospective Mayor and Alderman in order to qualify them to hold such offices?

"2. A county officer, having given a surety company official bond, and having paid the premium thereon, now presents a claim against the county for the amount of the premium which he has paid for his official bond. Is such a claim a charge against the county?"

From the facts stated in your first question, and the letter accompanying the same, it appears that there has been no town of Polson for a year; and, therefore, no resident of such town at this time who has resided there long enough to qualify as mayor under section 3225, revised codes, or as alderman, under section 3229, if these sections apply to the qualifications of officers elected at the first election after the incorporation of a town.

Section 3208, as amended by chapter 56, laws of 1909, provides for the filing of a petition precedent to the incorporation of a town.

Any male person, who is a citizen of the United States, and a resident of the state of Montana for one year, and over 21 years of age, residing within the limits of the proposed incorporation, may sign such petition.

Upon the filing of such petition, if the county commissioners find that there are three hundred inhabitants within the proposed corporation, they must order an election, regardless of the length of time such

inhabitants have actually resided within the limits of the proposed town. If the question of incorporation is carried at such election, it necessarily follows that officers must be elected to organize and carry on the functions of the municipal government. In fact, section 3210 provides that when it has been voted to incorporate a town that the board of county commissioners must call an election for the purpose of electing officers.

However, if sections 3225 and 3229 are to govern the qualifications of such officers, it necessarily follows that it is impossible to carry out the mandatory provisions of said section 3210 in cases where a new town has sprung up within a period of less than two years.

"The law never requires impossibilities."

Section 6199, revised codes.

"An interpretation which gives effect is preferred to one which makes void."

Section 6209, revised codes.

Therefore, under the above rules of construction, I am of opinion that said sections 3225, 3228 and 3229 are not intended to apply to the officers elected at the first election of such a municipal corporation.

In any event, if officers are elected who do not possess the qualifications required by these last named sections, they would be de facto officers until such time as a contest was instituted and their election set aside, and if no contest was instituted they could continue to perform the duties of their respective offices, and their acts, as de facto officers, would be valid.

In answer to your second question, you are advised that there is no law in this state whereby a county officer can require the county to pay the premium on his official bond, when he procures the same from a surety company.

A bill was introduced at the last session of the legislature, which required all county and state officers to furnish surety company bonds and made the premium a charge against the county and state, respectively, but this bill never passed.

Very truly yours,

ALBERT J. GALEN,

Attorney General.