

Constitutional Law, Increase of Salary. Salary, Increase of Clerk of Court. Clerk of Court, Term Of. Clerk of Court, Salary Of.

Where an election for clerk of court results in a tie vote, a vacancy exists in the office. The appointment by the board of county commissioners to fill such vacancy is effective only until the next general election. Where the election is then had it is to fill the unexpired term and a re-classification of the county changing the salary of the present incumbent cannot be effective until after the expiration of his term.

December 31, 1910.

Chas A. Taylor, Esq.,
County Attorney,
Billings, Mont.

Dear Sir:

I am in receipt of a letter signed by Mr. Harry L. Wilson, your predecessor as county attorney of Yellowstone county, wherein he makes inquiry concerning the right of Mr. Lorin F. Jones, to receive the salary designated by statute as clerk of the district court in a county of a class which Yellowstone county will assume on January first. The question relates back, of course, to another question which we have heretofore discussed, that being, as to whether the appointment of the clerk of the district by the county commissioners is for the unexpired term or until the next general election. In three opinions, the first being found at page 18, Volume I, of my opinions, the second being found at page 402 of the same volume, and the third being found at page 334 of Volume III, have gone into that question at considerable length. I believe that the appointment of Mr. Jones by the county commissioners could extend no farther than the next general election, and that Mr. Jones was properly nominated and elected at the last general election and hereafter holds his office by virtue of such election.

As indicated in the opinion addressed to the Honorable Harry L. Wilson, and appearing in volume III, page 334, of the opinions of attorney general, that conclusion is justified by the present attitude of the supreme court thereto.

The principal question contained in Mr. Wilson's letter is as to the salary which Mr. Jones may now receive as clerk of the district court. After an examination of the authorities, I am of the opinion that the constitutional prohibition against extending the term of office, or increasing or diminishing the salary of a public officer goes to the office itself rather than to the individual who may be temporarily filling such office. The principal case decided by a court of final authority under constitutional and statutory provisions similar to those of Montana, is the case of *Larew v. Newman*, 81 Cal. 588. An examination of the notes of California reports, indicates that this case is still the law in that state. The case was decided before the adoption of the codes in this state and would, I believe, be considered of great weight as an authority in the supreme court of this state, in view of the fact that the constitution and statute governing the question of increasing salary of public officers was adopted verbatim from the California law.

You are therefore advised, that it is my opinion that the salary of the clerk of the district court of Yellowstone county cannot be increased or diminished during the term beginning the first Monday in January 1909 and ending the first Monday in January 1913.

Yours very truly

ALBERT J. GALEN,

Attorney General.