

**State Officers and Boards, Vacancies In How Filled During Vacation of Legislative Assembly. Officers, Bond and Oath of Office Of, When Appointed to Fill Vacancies.**

If during a recess of the senate a vacancy occurs in any office which the governor has authority to fill by nomination to be confirmed by the senate, it is the duty of the governor to appoint some fit person to discharge the duties of such office until the next meeting of the senate, when he shall nominate some person to fill such office. Such appointee is required to qualify by filing his oath of office and bond, and holds office until the next meeting of the senate when the

governor nominates some person to fill the office. Upon the nomination being confirmed by the senate the individual appointed during the recess of the senate ceases to hold office and the individual nominated and confirmed is entitled to the office upon filing his oath of office and bond as required by law.

January 7th, 1911.

Hon. Edwin L. Norris,  
Governor,  
Helena, Montana.

Dear Sir:

Your letter of January 5th, has been received requesting my opinion upon the following statement of facts:

“During the vacation of the legislative assembly, I made various appointments to fill vacancies in state offices and boards. On January 3rd I reported these appointments to the senate and confirmation followed. I also on that day appointed the same persons to the respective positions for the remainder of the unexpired terms of such officers which said appointments were also confirmed by the senate.

Please inform me if the persons named by me on January 3rd are now required to again file their oaths of office and bonds required by law to qualify for their respective offices.”

In reply, I will say, Section 7, of Article VII, of the constitution of Montana, provides:

“The governor shall nominate, and by and with the consent of the senate appoint, all officers whose offices are established by this constitution, or which may be created by law and whose appointment or election is not otherwise provided for. If during a recess of the senate a vacancy occur in any such office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office.”

It will be noticed that under this provision of the constitution you had authority to fill any such vacancies by appointment, the appointment to hold until the next meeting of the senate, at which time it become your duty to nominate some person to fill such office. As soon as the individual nominated by you had been confirmed by the senate, he commenced to hold office under such nomination and confirmation, and the individual appointed by you during the recess of the senate would cease to hold, and therefore, the persons so nominated by you and confirmed by the senate would be required to give the bond provided by law and take the oath of office.

Yours very truly,

ALBERT J. GALEN,

Attorney General.