

**County Commissioners, Term of Office in New County.
County Commissioners, Right to Hold Office When County
is Divided.**

Upon the formation of a new county the commissioners of any of the counties from which the new county is formed who reside within the limits of the new county cease to be commissioners of the old county unless they remove within the latter.

There should be nominated for the office of county com-

missioner for the new county, one commissioner for the term of six years, one commissioner for the term of four years, and one commissioner for the term of two years, from and after the first Monday after the first day of January 1911, and for the purpose of determining the terms of office, the years said officers are to hold office are to be computed respectively from and including the first Monday of the January following the last preceding general election.

December 18, 1911.

Mr. Thos. Downen,
County Commissioner,
Chinook, Montana.

Dear Sir:

I acknowledge receipt of your letter of December 15th requesting my official opinion upon the following questions, to-wit:

1. Will the individuals comprising the board of county commissioners of Chouteau County continue to hold office as commissioners of said county in the event the county is divided by the creation of Blaine and Hill Counties?
2. Should our names be placed upon the ballot?
3. How long will we hold office in the new county?
4. What will be the term of office of the commissioners for the respective counties?

In answer to your first question I will say that under the provisions of Sec. 2955, Rev. Codes, no person is eligible to a county office who at the time of election is not of the age of 21 years, a citizen of the state, and an elector of the county in which the duties of the office are to be exercised or for which he is elected. By the provisions of Sec. 2882, Rev. Codes, each member of the board of county commissioners must be an elector of the county he represents.

In order to be an elector he, of course, would necessarily be required to be a resident of the county.

Upon the formation of a new county the county commissioners of any of the counties from which the new county is formed who reside within the limits of such new county cease to be commissioners of the old county unless they remove within the latter.

Vol. 11 Cyc. 353;

State vs. Walker, 17 Ohio, 135;

People vs. Morrell, 21 Wend. (N. Y.) 563.

Under the provisions of our statute and the cases above cited it is clear that any member of the present board of county commissioners of Chouteau county who may reside without the boundaries of Chouteau county, in the event a portion of the present county is cut off and included within a new county, would cease to be a county commissioner of Chouteau county, unless he moved his residence within the boundaries of Chouteau county as so changed before the final creation of the new county. In the event, however, that a commissioner should re-

side within the boundaries of Chouteau county as so changed he would, of course, continue to be a commissioner of Chouteau county until the expiration of the term for which he was elected.

A vacancy in the board of county commissioners of Chouteau county would be filled by appointment by the judge of the judicial district in which the vacancy occurs.

Sec. 4, Art. XVI. Constitution;

Sec. 2883, Revised Codes.

In answer to your second question I will say that under the provisions of Chapter 112, Session Laws of 1911, officers for the proposed new county are required to be nominated in the manner provided by general law, which would, of course, include county commissioners, and in the event that any member of the present board of county commissioners of Chouteau county desire to be nominated for the office of county commissioner of the new county it would be necessary for him to receive the nomination in the manner provided by law and be elected to such office by a vote of the people.

In reply to your third question, under the provisions of Sec. 4, Chap. 112, Session Laws of 1911, all officers elected at said election shall hold their office until the time provided by general law for the election and qualification of such officers in this state and until their successors are elected and qualified; and for the purpose of determining the terms of office of such officers, the years said officers are to hold office are to be computed respectively from and including the first Monday of January following the last preceding general election.

Under the provisions of Sec. 4, Art. XVI, of the Constitution, one commissioner is elected for a term of 2 years and one commissioner for a term of 4 years and one commissioner for a term of 6 years. There would, therefore, be nominated for the office of county commissioner of the new county, one commissioner for a term of 6 years, one commissioner for a term of 4 years and one commissioner for a term of 2 years from and after the first Monday of January, 1911.

In answer to your 4th question as stated above you could not hold office as county commissioner of the new county unless elected in the manner provided by law and your term of office would be as above stated.

Yours very truly,

ALBERT J. GALEN,

Attorney General.