

New Counties, Term of Officers In. County Commissioners of New County, Term of Office. Officers of New County, Term of Office.

By the provisions of Chap. 112, Laws of 1911, the commissioners elected at the first election in a newly created county hold office for the terms of two, four and six years, respectively, from the first Monday in January following the general election preceding the creation of such new county.

June 5, 1912.

The Havre Plaindealer,
Havre, Montana.

Gentlemen:

Your letter of May 25th, addressed to the Attorney General, has been received. You request an official opinion relative to the duration of the terms of the three commissioners elected in your county at the time of the creation of the county and the elections of first officers in February last.

The attorney general is precluded by statute from rendering official opinions to others than state officers and boards, and certain county officials, and Mr. Galen has found it necessary to adhere strictly to this rule in the administration of the affairs of the office. However, we desire to give consideration to your letter, and at the request of Mr. Galen I have looked into this matter, and give you the following as my opinion upon the question submitted.

At the time of the election for the creation of the counties of Hill and Blaine out of Chouteau County, pursuant to an opinion of the Department of the Attorney General addressed to Honorable Thomas Downen, County Commissioner of Chouteau County, under date of December 18th, 1911, there was duly nominated and elected three commissioners for the county of Hill for what were designated as the six,

four, and the two year terms. This was pursuant to the provisions of Sec. 4 of Chap. 112, Laws of 1911 (The New County Act). This section provides that 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 after the first day of January following the last preceding general election. This provision is not in conflict with, but is rather in accord, with the provisions of Sec. 4, Art. XVI. of the State Constitution, which provides, in substance, that one commissioner should be elected for a term of two years, one commissioner for a term of four years, and one commissioner for a term of six years, and that at the general election in 1908, and biennially thereafter, one commissioner should be elected in each county for the term of six years.

Upon the creation of the new county of Hill, offices were created. among them the offices of county commissioners, one six-year office, one four-year office, and one-two year office, each a separate and distinct office, and each requiring a separate and distinct officer, and is a rule of law that an office newly created becomes, IPSO FACTO, vacant in its creation (State v. Butte, 41 Mont. 377).

The Act of 1911 makes explicit provision for the filling of the offices created and the vacancies existing. The latter part of Sec. 4, above referred to, provides that the officers elected "shall hold their offices until the time provided by general law for election and qualification of such officers in this state * * *". This provision taken alone might lead to the inference that since at the general election in 1912 county commissioners are to be elected throughout the state in accordance with the provisions of general law, that all three commissioners of the new county of Hill should be elected at this time, but the subsequent provisions of the same section removes all doubt by designating the manner in which the terms of office of the first officers of the county shall be determined; said section providing:

"For the purpose of determining the term of office of such officers the years said officers are to hold office are to be computed respectively from and including the first Monday after the first day of January following the last preceding general election."

This provision necessarily contemplates that some of the officers elected at the first election in a county shall hold office for a term beyond the succeeding general election, and it again recognizes the distinction between the offices of the three commissioners. Controversy with reference to this matter has undoubtedly been occasioned by failure to note the distinction between a vacancy in office filled by appointment, and a vacancy filled by election. In the case of the commissioners of Hill County, they were elected by the electors of the county for the terms specified in the law, and for the terms of the offices in which there were vacancies existing, to-wit: the six, the four,

and the two-year term. These commissioners were not appointed by some appointing power, but, as stated above, were elected by the electors of the county. It is true there is some doubt in law as to whether a person may be appointed to an office beyond a general election, but in the case of an election to fill a vacancy there is little doubt and especially in view of the constitutional provision above referred to and the express provision of Chap. 112, Laws of 1911.

It is, therefore, my opinion that the commissioners elected for the county of Hill at the special election of February 20th, 1912, will hold office in accordance with the terms for which each was nominated and elected respectively, for two, four, and six years from and after the first Monday of January, 1911.

I desire to add further that the views herein expressed are concurred in by Mr. Galen and also by the other assistant attorneys general.

Very truly yours,

W. S. TOWNER,

Assistant Attorney General.