

**Nominations, to Office. Appointments, to Office. Governor,
When Duty of to Appoint.**

It is not within the duty or province of the Governor to make appointment of custodian of Grand Army records, under Chap. 32, Laws of 1913.

July 15, 1914.

Hon. S. V. Stewart,

Governor of the State of Montana,
Helena, Montana.

Dear Sir:

I have the honor to acknowledge receipt of your communication of the 14th instant, submitting the question:

"Is it the duty of the Governor to appoint the custodian and keeper of the archives, records, documents, relics, and mementoes of the department of Montana of the Grand Army of the Republic?"

Chapter 32, Laws of 1913, after providing for the setting apart of a room in the Capitol building "for the purpose of storage and safe keeping of the archives, records, documents, relics and mementoes of the department of Montana of the Grand Army of the Republic," provides that the same after being suitably furnished

"shall be under the charge of a custodian selected by the Department Commander of Montana of the Grand Army of the Republic and their successors in office."

Section 7 of Article VII of the state constitution, referred to in the copy of the letter attached to your communication, provides:

"The Governor shall nominate, and by and with the consent of the senate, shall appoint all officers, whose offices are established by this constitution, which may be created by law, and

whose appointment or election is not otherwise provided for."

If, therefore, this appointment is one which falls within the duty of the Governor to make, it must be by and with the advice and consent of the senate, except perhaps the ad interim appointment during a recess of the senate, but by the terms of the constitution, this power of the governor to make appointments, only applies where the "appointment or election is not otherwise provided for." In this case, it is otherwise provided for. Neither the Governor nor the senate has anything to do with it. The Department Commander is the only person authorized to act.

Furthermore, this position is not a public office. The only qualification for the incumbent is that he must be selected by the Department Commander. Neither age, sex, citizenship or residence or tenure is considered, nor is any bond or oath of office required.

Furthermore, if this were a public office, and if it were the duty of the Governor to make the appointment, under the provisions of said Section 7 of Article VII, State Constitution, the Governor as "the supreme executive officer of the state," would have the authority to act on his own initiative in making the selection, but by the terms of the act, such custodian must be "selected by the Department Commander." Hence, it necessarily follows that such appointment is not within the province or power of the Governor.

Yours very truly,

D. M. KELLY,
Attorney General.