

**Senator, Election of New County. Tenure of State Senator in New County. New County, Senator, Election in. Election, State Senator in New County.**

Under strict construction of the law, the person elected to the office of state senator in a newly created county would hold office only until the first Monday in January, succeeding the next general election, but the Senate is the judge of the election and qualification of its own members and such case must therefore, be finally determined by the Senate itself.

March 20th, 1913.

Hon. P. M. Abbot,  
State Senator,  
Three Forks, Montana.

Dear Sir:

I am in receipt of your letter of the 17th instant, submitting the question:

“What is the term of office of a state senator chosen at a special election creating a new county?”

The full term of a state senator is four years, no more and no less.

Sec. 2, Article 5, State Constitution.

The general election of the State of Montana is held on the first Tuesday after the first Monday of November in the even numbered years. (Sec. 450 R. C.) All other state elections are special elections.

If therefore, the senator chosen at the special election creating a new county holds his office for the full term of four years from and after such election, it necessarily follows that a special election would always have to be held to select his successor. But by the provisions of Chapter 17, Session Laws of 1909, the term of a senator begins on the first Monday of January next succeeding his election, except to fill vacancies and the term then begins on the next day after his election. Authority for this statute is found in Sec. 6, Article 5, State Constitution. If, therefore, a senator in a newly created county is elected for a full term, he does not take office until the first Monday of January succeeding his election, but if elected to fill a vacancy, his term begins on the day succeeding his election. But by the provisions of Chapter 112, Session Laws of 1911, the officers elected at such special election take office at once or at least within twenty days after such election. The office of such senator is ipso facto created by the creation of the county, and an office newly created becomes ipso facto vacant in its creation.

State ex rel vs. Mayor of Butte, 41 Mont. 377.

From these provisions of the law it seems to me that it necessarily follows that a state senator elected at an election creating a new county is elected to fill a vacancy, and that he holds office only until the first Monday of January succeeding the next general state election, which in this case will be the first Monday of January, 1915.

Very truly yours,

D. M. KELLY,  
Attorney General.  
March 27th, 1913.

Hon. P. M. Abbott,  
Three Forks, Montana.

Dear Sir:

I am in receipt of your letter of the 24th instant, calling attention to certain provisions of Chapter 112, Laws of 1911, relating to the creation of counties, and with reference also to House Bill No. 332, of the laws of the last Legislative Assembly. This house bill was not a law at the time the letter was written you, and I had no assur-

ance at that time that it would ever become a law. Said Chapter 112 of the Laws of 1911, in its provision relative to the election of officers and the tenure of office, appears to apply exclusively to county offices. House Bill 332 amends this chapter in many respects, and by its tenor rather than by specific provisions it may be gathered that it was the intention of the Legislature that the officers elected at the election for the creation of the county should include senators and representatives, as well as county officers. There is no direct statement in the law to this effect, the statement therein being, "for the counties of the class to which said proposed county will belong," but a court might hold this to include officers elected within the county or by the electors of the county so as to include said officers, that is senators and representatives. The provision of the bill to which you call specific attention is to the effect that "said officers are to hold office" and their terms "are to be computed \* \* \* from \* \* \* the first Monday after the first day of January following the last preceding general election."

Chapter 117 of the Laws of 1909 provides that the term of senator "shall begin on the first Monday of January, next succeeding his election." The provisions of House Bill 332 are that such term begins on the first Monday after the first day of January. Hence, if both these laws are operative, and the first day of January happened to fall on Monday, some of the senators would take office on the first Monday in January, and some of them would take office a week later. By the provisions of Sec. 6 of Art. 5 of the State Constitution, the Legislative assembly shall convene on the first Monday of January. In all cases then, under the provision of this bill, where the first day of January happened to fall on Monday, the senators and representatives elected in the new counties would not take office for a week after the Legislative Assembly convened. Furthermore, under the provisions of the house bill, the persons elected to office

"are to hold office from the first Monday after the first day of January, following the last preceding general election."

In other words, the officers so elected would take office in some cases almost two years prior to the time when the county was created, and suppose a county was created at the general election, in 1914, the county officers elected would take office immediately, but their term would date back almost two years, so that the term for which they were elected would expire on the first Monday of January following their election, and at that time all county officers with a two years term would become vacant, unless in addition to the officers voted for at the election for the creation of the county, there be elected at the general election held on the same day, another set of officers whose terms should commence on the first Monday of January, succeeding their election; and this same condition would arise in the case of a creation of a county, either on a general election day or at any time between the time of the general election and the first Monday in the following January.

The supreme court might perhaps be able to harmonize some of

these conflicting and inconsistent provisions by reading into the law the intent of the Legislative Assembly rather than by following the literal meaning of the language employed. However, as to state senators, the senate itself would be the deciding tribunal. The question would never reach the forum of the supreme court:

“Each house shall chose its own officers, and shall judge of the elections and qualifications of its members.”

Sec. 6, Art. 5, State Constitution.

If, therefore, you are elected as senator from the newly created county, the only tenure of office that you can rely upon with certainty is until the first Monday of January, 1915. The senate in the exercise of its authority may determine that you will hold office until the first Monday of January, 1917. That is a question that no one can determine except the senate itself, when it convenes for the Fourteenth Legislative Assembly. It would be worse than speculation to attempt to make any statement whatsoever now, as to what determination the next senate will reach on this question. If, however, you rely only upon the two year term and hold for the four years, you will not be disappointed, but if you surrender your present office, relying upon a four year term from the county, and then are cut off with a two year term, you will be at least disappointed. I would therefore prefer to advise you that you only get a two year term, and then let it be extended to four years, than to advise you as a matter of law you can get the four year term, and have the senate shorten it to two years, for so far as the law is concerned the only thing you are certain of is the two years term, but the senate has the authority to make it read four years.

Very truly yours,

D. M. KELLY,  
Attorney General.