

Cities and Towns—Parks—Commissioner Of.

Under the decisions of the Supreme Court the Governor is without authority to appoint a park commission for cities.

April 21, 1919.

Hon. S. V. Stewart, Governor,
Helena, Montana.

Dear Sir:

I am in receipt of your request that I advise you regarding the provisions of Sections 3318 and 3324 inclusive, of the Revised Codes of 1907 (originally Sections 1 to 7 inclusive, Senate Bill No. 65, Acts of Seventh Session, 1901), which provide for the appointment of boards of park commissioners, define and prescribe their powers and duties, etc.

Section 3318, originally enacted as Section 1 of Senate Bill No. 65, provided for a board of park commissioners in each city of the first class, to be composed of the mayor and six members to be appointed by the governor. By Chapter 101 of the Session Laws of 1913, this section was amended so as to provide for a board of park commissioners for each city of the first and second class, to be composed of the mayor and six members to be appointed by the governor. I find no other acts which attempt to amend or repeal any of the provisions contained in such sections.

On June 4, 1912, the Hon. Albert J. Galen, then Attorney General, rendered an opinion in which he held that none of the provisions of these sections applied to cities organized under Chapter 57 of the Session Laws of 1911, commonly known as the Commission Form of Government Act (4 Opinions of Attorney General, 465).

The provisions of these sections were before our supreme court in the case of State ex rel Gerry vs. Edwards et al., 42 Montana 135, 111 Pac. 734, and in the Attorney General's opinion above referred to he held that the supreme court in that case had declared to be unconstitutional the provision attempting to give authority to the park commissioners to levy and collect taxes, and that such decision had the effect of making the park commissioner merely advisory to the city council. With this portion of the Attorney General's opinion, I am unable to agree. A careful reading of the whole decision in that case discloses that the court intended to hold, and in fact did hold that the act of 1901, as a whole, was unconstitutional.

The whole act having been declared unconstitutional, our laws contain no valid provisions authorizing the governor to appoint members of a park commission for any city.

Respectfully,

S. C. FORD,

Attorney General.