

County Treasurer, When He Assumes Office.

The term of office of county treasurer cannot be for a period longer than two years, and when Powder River county was created by special act the county treasurer does not take office until the first Monday of March, 1921.

November 23, 1920.

Mr. D. R. Finch,
Broadus, Montana.

Dear Sir:

I am in receipt of your letter asking me to advise you on what date the newly elected County Treasurer for Powder River County will take his office.

Powder River County was created by Chapter 141, Session Laws 1919. Section 13 of said Chapter, after naming certain persons to act as county officers, contains the following provisions:

"All of said officers * * * * shall hold their respective offices until after the next general election, or until their successors are duly elected and qualified."

Section 2960 Revised Codes 1907, provides that all elective county and township officers, except county commissioners, must be elected at the general election to be held in each even numbered year, and must take office on the first Monday of January next succeeding their election, except county treasurer, whose term begins on the first Monday of March next succeeding his election, and hold office for two years.

The only question is whether the term of office of the person elected county treasurer of Powder River County at the general election held in November, 1920, begins immediately after he has qualified, after such election, by taking the official oath and filing his official bond, or whether it does not begin until the first Monday of March, 1921.

Section 5, Article 16 of the Constitution provides that certain county officers, among them, county treasurer, shall be elected, and that persons elected to such offices shall hold their respective offices for the term of two years, and until their successors are elected and qualified.

If it was intended by the legislature, by Section 13 of Chapter 141 Session Laws 1919, to provide that the term of the office of the person elected county treasurer of Powder River County at the general election in November, 1920, should begin immediately upon his qualifying after such election, then such term would continue until the first Monday of March, 1923, and would thus provide for the election of such persons as county treasurer for a term of more than two years, and would be in violation of Section 5 Article 16 of the Constitution.

In the new county act (Chap. 226 Session Laws 1919), the legislature evidently understood that it could not provide for a term for any county officer longer than two years, hence we find that it expressly provides that for the purpose of determining the terms of office of those persons elected at the election creating the county the terms should be computed from and including the "first Monday after the first day of January following the last preceding general election."

I am, therefore, of the opinion, that when the legislature, in Section 13 Chapter 141, said that the persons named in said act as county officers should hold their respective offices until after the next general election, the legislature meant that they should hold such offices until the time when the terms of their successors would commence as prescribed in Section 2960 Revised Codes, that is until the first Monday of January following the general election in November, 1920, with the exception of county treasurer, and with reference to the county treasurer until the first Monday of March following such election. Under such construction the person elected at the general election in November, 1920, as county treasurer of Powder River County, is not entitled to such office until the first Monday of March, 1921.

The following authorities support the foregoing construction of such statutes:

Killion v. Herman 22 Pac. 1026;
Peo., ex rel Fair v. Colton 6 Cal. 84;
State ex rel Attorney General v. Brewster 9NE 849.

Respectfully,

S. C. FORD,

Attorney General.