

Salary—County Attorney, Missoula County—Vacancy.

Where there is a vacancy in the office of County Attorney and such is filled by appointment and the County Commissioners fail to provide for the election to fill the vacancy at the next election, such appointee is entitled to the salary of such office until the person regularly elected assumes the office.

March 13th, 1919.

Mr. G. F. Peterson, Chairman,
Board of County Commissioners,
Missoula, Montana.

Dear Sir:

On February 4th, you requested an opinion from me on the question as to who was entitled to the salary as county attorney of Missoula County from December 28th, 1918, to January 6th, 1919, it appearing that on September 13th, 1918, a vacancy occurred in such office which was filled by appointment by the Board of County Commissioners, and that the newly elected county attorney qualified for the office on December 28th, 1918, and on March 1st, 1919, I advised you that the newly elected county attorney was entitled to such salary.

Since so advising you my attention has been called to certain facts in connection with such question, and which were not known to me at the time I so advised you, and from these facts I am compelled to advise you that my advice to you was erroneous and that as a matter of fact, the newly elected county attorney is not entitled to the salary for such time.

When the vacancy occurred in the office of county attorney it became the duty to fill such vacancy by appointment, and the person so appointed held such office until the next regular election and until his successor should be elected and qualified. It then became the duty of the board of county commissioners to call a special election, to be held on the same day as the next regular election, for the election of some person to fill the unexpired term of such county attorney, and the person so elected at such election would be entitled to hold such office for the remainder of the unexpired term, a vacancy again occurred in such office which should have been filled by appointment by the board for the unexpired term. The board having failed to call such special election and having failed to fill the vacancy in the office occurred by reason of no person being elected for such unexpired term, the person appointed by the board when the office first became vacant, as locum tenens, was entitled to perform the duties of the office until his successor was elected and qualified. (State ex rel. Rowe vs. Kehoe, 49 Mont. 582; 144 Pac. 162.)

The county attorney elected at the general election held in November, 1918, was not elected for any portion of the term expiring with January 5th, 1918, but was elected for a term of two years commencing with January 6th, 1919, and no matter on what date he qualified such qualification was only for the term commencing with January 6th, 1919, and not for any portion of the term ending with January 5th, 1919. The result is that the county attorney elected for the term commencing January 6th, 1919, is not entitled to the salary of the office of county attorney from December 28th, 1918, to January 6th, 1919, but the person appointed by the board to fill the original vacancy in the office, as locum tenens being entitled to perform the duties of the office until January 6th, 1919, he is entitled to the salary of the office until such date.

Respectfully,

S. C. FORD,

Attorney General.