

Highways—Special Road District—Board of Directors.

Where a Board of Directors of a Road District has ceased to exist, it cannot fill a vacancy in membership.

Where a Director never takes the oath of office and leaves the county he forfeits the office.

Where a Director files his bond and takes the oath of office, he is lawfully entitled thereto.

Where a vacancy in the Board exists the County Commissioners should make appointments to fill the same.

March 29th, 1919.

Mr. M. L. Parcels,
County Attorney,
Columbus, Montana.

Dear Sir:

Replying to your letter of February 26, 1919, I have to advise as follows: Under Section 5 of Chapter 145 of the Laws of the Fifteenth Legislative Assembly, the old Board of Directors was appointed to serve *until* the next general election. They therefore went out of the office on the day of the last general election and they no longer possess any of the powers extended to such office. Under Section 364 and 366 of the Codes referred to in your letter, it became incumbent upon the newly elected officers to file with the County Clerk and Recorder their oaths of office "within thirty days after the officer has notice of his election or appointment." Owing to the necessity of counting the votes cast under the Absent Voter Law, no officers could be declared elected last fall before December 28, 1918, hence I assume that none of these officers received notice of their election prior to that date.

Under Section 420 of Sub-division 9 of the Revised Codes of Montana, of 1907, the failure of any officer to file his oath of office within the time prescribed by law vacates the office. Under the Constitution of Montana, Article 16, Section 5, vacancies in all county, township and precinct offices are filled by appointment by the Board of County Commissioners.

Applying the law above quoted to the state of facts presented in your letter, I conclude as follows:

1. That the old Board has ceased to exist and no longer possesses power to file a vacancy in its membership.
2. That Gray and Williams have forfeited the office to which they were elected, the former by reason of the fact that he has left the county and never filed his oath of office the latter by reason of the fact that he never filed his oath of office with the County Clerk and Recorder as required by law.
3. That Gotken has filed his oath and bond within the time prescribed by law and is lawfully entitled to his office.
4. That the county Commissioners of Stillwater County should appoint two members of the Board of Directors of Special oRad District No. 8 and file the vacancies, now existing.

Respectfully,

S. C. FORD,

Attorney General.