

Removal of Officers—County Officers — County Commissioners—Malfeasance.

Under Section 4911, Revised Codes of Montana, 1921, the Board of County Commissioners has power to remove county officers from office where, after investigation, it finds that such officers have collected fees and have failed to account for them.

Arthur C. Erickson, Esq.,
County Attorney,
Plentywood, Montana.

My dear Mr. Erickson:

You have submitted to this office the question whether the County Commissioners are authorized under the provisions of Section 4911, Revised Codes of 1921, to oust the County Clerk and Recorder for failure to account for fees collected until after an investigation of her office has been made and demand made to make up the shortage.

Section 4911 provides:

"The Board of County Commissioners, upon receiving a certified copy of the record of conviction of any officer for receiving illegal fees, or where the officer collects fees and fails to account for the same, upon proof thereof, must declare his office vacant and appoint his successor."

This section has not, so far as I am able to find, been construed by our Supreme Court. However, in the early case of Carland v. Commissioners, 5 Mont. 579, the Supreme Court upheld a provision of the Revised Codes of 1879 authorizing the Board of County Commissioners "to forthwith take possession of the books, money and papers and other property of every kind and description belonging to the county which came into the possession of said treasurer by virtue of his office, and appoint another in his place," where, after an examination, it was found that there was any shortage, or that the books did not correspond with the amount of funds on hand or that they did not show the actual condition of the office, or it appeared to the Board that any funds of the county had been embezzled or diverted from their proper channel.

Section 18 of Article V of the Constitution provides:

"All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law."

It is, therefore, my opinion that the Legislature having provided a method for the removal of county officers by Section 4911, Revised Codes of 1921, the Board of County Commissioners has a right to remove the County Clerk and Recorder where, after investigation, it finds that the officer has collected fees and has failed to account for them.

Very truly yours,

L. A. FOOT,
Attorney General.