

**County Commissioners — Vacancies — Elections — Term —  
Special Elections.**

Where a county commissioner dies after the primary election but before the general election the county commissioners should call a special election to be held on the date of the general election and elect a commissioner whose nomination shall be had under the provisions of section 615 R. C. M. 1921 as an independent candidate.

September 15, 1928.

Donovan Worden, Esq.,  
Deputy County Attorney,  
Missoula, Montana.

My dear Mr. Worden:

You have stated that one of the county commissioners of Missoula county died on August 22nd of this year; that his term of office does not expire until the first Monday in January, 1931.

You desire to know whether the successor who will be appointed by the district judges will hold office until the expiration of the term for which the commissioner was elected, or only until the next general election in November of this year.

Facts presenting the same legal question were before the supreme court in the case of State ex rel. Rowe v. Kehoe, County Clerk, 49 Mont. 582. I believe that the county commissioners should call a special election by virtue of their authority under section 536 R. C. M. 1921, to be held on the day of the general election, and that independent candidates can be nominated to be placed on the ballot by virtue of section 615 R. C. M. 1921. If this is done, it is my opinion that the vacancy can

be filled by election, the person elected to assume the duties of his office immediately after the election and to hold for the remainder of the unexpired term. I believe, however, that it would be impossible to have candidates placed on the ballot under a party designation because of the provisions of chapter 7 of the laws of 1927.

Very truly yours,

L. A. FOOT,  
Attorney General.