

Opinion No. 341

Legislative Assembly—Senator—Vacancies—Term of Successor.

HELD: The term of a State Sena-

tor, elected to fill a vacancy caused by death of incumbent, in accordance with Governor's Proclamation, is for the term of the Senator he was elected to succeed (Art. VIII, Section 34 of Constitution) and failure of clerk to recite in certificate of election that the person was elected to fill a vacancy is immaterial.

not, by his certificate, remove the plain requirements of the Constitution. It is therefore my opinion that you hold office only for the unexpired term of Mr. Teagarden.

September 19, 1933.

You have submitted the question of whether or not you hold office for four years or for the unexpired term of Mr. Teagarden. Mr. Teagarden was elected Senator from Fergus County in November, 1930. He died in December, 1930. No special election was held to fill the vacancy. At the election in November, 1932, you were duly elected and the certificate of election issued to you.

Upon the death of Senator Teagarden a vacancy occurred. (Section 511, R. C. M. 1921). No special election was held to fill the vacancy. On the 28th day of July, 1932, the Governor of the State of Montana issued a proclamation for a general election of a state senator of Fergus County to fill a vacancy. The certificate of election signed by the county clerk recited that you were duly elected State Senator without specifying that it was to fill a vacancy.

The last sentence of Section 34, Article VIII of the Constitution provides: "A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected." Section 2, Article V, of the Constitution provides that senators shall be elected for four years, while Section 4 *id.*, provides that one-half of the senators elected to the First Legislative Assembly shall hold office for one year and the other half for three years, to be determined by lot. The plan was to have half of the senators thereafter hold over for two years, while the other half were required to submit to an election. If in filling a vacancy the person elected held for four years instead of the expiration of the term for which the person he succeeds was elected, this plan would be disregarded.

In my opinion the omission by the county clerk in the certificate of election, is immaterial as the clerk could