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January 9, 1933.

Your request for an opinion respecting the status of Marie A. McLean, acting County Clerk of Deer Lodge County, has been received.

According to the facts before us, Marie A. McLean received a majority of all the votes cast at the last general election for the office of County Clerk of Deer Lodge County and was given notice of her election on or about the 24th day of November, 1932, but she did not file her official bond (after approval by the District Judge) and the oath of office until the 30th day of December, 1932. The Board of County Commissioners of Deer Lodge County, however, took no affirmative action in the matter prior to her qualification as such County Clerk.

In view of the circumstances we think the case of *State ex rel. Wallace v. Callow*, 78 Mont. 308, is controlling. There the Supreme Court held that section 432, Revised Codes of Montana, 1921, is directory only and that the failure of the officer-elect to qualify within the thirty-day period did not, ipso facto, work a forfeiture. The Court further held, in effect, that if an officer-elect file the oath and bond after the lapse of the thirty-day period but before the term of office begins and the appointing authority remain quiescent up to the time such filing occurs, then the power to declare a vacancy afterwards and make an appointment is lost.

The great weight of authority, indeed, is to the effect that "Statutes requiring an oath of office and bond are usually directory in their nature; and unless the failure to take the oath or give the bond by the time prescribed is expressly declared, ipso facto, to vacate the office, the oath may be taken or the bond given afterwards, if no vacancy has been declared." (*Dillon on Mun. Corp.* 4th Ed.; *Wallace v. Callow*, supra; *In re Bank of Mt. Moriah's Liquidation-Cantley, Com'r. v. Village of Mt. Moriah*, 49 S. W. (2d) 275.)

Opinion No. 5

Public Officers—Official Bond, Tardy Filing of.

HELD: Statutes requiring an oath of office and bond are usually directory in their nature; and unless the failure to take the oath or give the bond by

In conclusion, we think Marie A. McLean is the de jure County Clerk of Deer Lodge County and entitled to all the rights and emoluments of the office.