

**Opinion No. 603****Courts—Vacancies—Appointments—  
Elections—District Judge—Proclamation of Election.**

HELD: The Governor is authorized to appoint a district judge to fill a vacancy in such office, but an election must be held at the next general election to fill such position for the remainder of the term and thereupon the person so elected will become entitled to the office, and the term of the appointee terminated.

Where the vacancy occurs after issuance of proclamation of general election a supplemental proclamation of election should issue notifying the voters of the judicial district that such election will take place.

August 30, 1934

You advise that a vacancy has occurred in the office of District Judge and ask for information as to your right to appoint a successor and the term for which such appointment is to be made.

The Constitution of the State of Montana provides, Article VIII, Section 34:

"Vacancies in the office of \* \* \* judge of the district court, \* \* \* shall be filled by appointment, by the governor of the state \* \* \*. A person appointed to fill any such vacancy shall hold his office until the next general election and until his successor is elected and qualified."

In the case of State ex rel. Patterson v. Lentz, 50 Mont. 322, it was decided by the Supreme Court of this state that, where by statute the office of an additional judge was created in a Judicial District and the Governor authorized to appoint such Judge who would hold office over one general election and until the next general election when Judges were customarily elected, the law was invalid to the extent that it attempted to permit the Governor to appoint a District Judge to hold office after a general election. Without a complete proclamation on the subject after party nominations had been made and no candidates selected, independent candidates filed for the office of District Judge. The election was held valid and the term of the appointee terminated.

Section 8820, Revised Codes of Montana, 1921, provides:

"If a vacancy occur in the office of judge of a district court, the governor must appoint an eligible person to hold the office until the election and qualification of a judge to fill the vacancy, which election must take place at the next succeeding general election, and the judge so elected holds office for the remainder of the unexpired term."

I, therefore, conclude that you are authorized to appoint a district judge to fill the vacancy and that an election should be held to fill such position at the next general election, and thereupon the person so elected will become entitled to the office and the term of the appointee terminated.

I would also call your attention to the fact that a proclamation of election should issue in connection with this matter. Quoting from the decision of the Supreme Court of this state, in the case of State ex rel. Patterson v. Lentz, 50 Mont. 322, on page 343:

"It becomes clear that it is incumbent upon the governor to include in his proclamation specific mention of the fact that in a particular district, where this condition exists, an election is to be held to fill the office for the rest of the term. He is the proper authority to proclaim the regular election for all officers, and section 6269 (now R. C. 8820) makes it incumbent upon him to include in his proclamation mention of the fact that a state office held by his appointee is to be filled by election."

It will, therefore, be necessary that you issue a proclamation of election advising that in a certain county or counties, comprising a certain judicial district, a general election will be held to elect one district judge to complete a term and fill a vacancy. The proclamation should indicate that it is a supplementary proclamation and should contain the same formalities as the proclamation heretofore issued.