

**Opinion No. 307.****Offices and Officers—Consolidation of  
Offices—Sheriff—Coroner.**

HELD: The offices of Sheriff and County Coroner may be consolidated.

June 29, 1936.

Hon. Frank H. Johnson  
State Examiner  
The Capitol

You have asked my opinion (1) whether the county offices of sheriff and coroner may be consolidated, and (2) whether in the event the offices of county treasurer and county superintendent of schools are consolidated the qualifications of the latter as provided by Section 950.1, R. C. M. 1935, are abrogated.

You have pointed out that the coroner in holding an inquest might be performing duties which are judicial in nature while the sheriff is an administrative officer and also that the coroner is the only officer who has authority to arrest the sheriff.

Article XVI, Section 5, expressly provides that "the Board of County Commissioners of any county may, in its discretion, consolidate any two (2) or more of the within named offices and combine the powers and duties of the said offices consolidated." The offices of both sheriff and coroner are named in this section. It is therefore my opinion that these two offices may be consolidated.

Whether a coroner is a judicial officer or an administrative officer it is not necessary to decide (although I am inclined to the view that he is an administrative officer since the holding of an inquest is merely conducting an investigation) because Article

IV, Section 1 of the Montana Constitution provides: "The powers of the government of this State are divided into three distinct departments: The legislative, executive, and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted."

If Article XVI, Section 5, of the Constitution provides an exception, it is therefore permitted by said Article IV, Section 1. But even if it had not been, it would have been effective anyway.

It is true that Section 4792 provides: "When the sheriff is a party to an action or proceeding, the process and orders therein, which it would otherwise be the duty of the sheriff to execute, must be executed by the coroner of the county."

It is not necessary, however, to determine whether the coroner is the only person who may serve process upon the sheriff, or whether the person acting as both may or must serve process upon himself. If any difficulty as such exists, it was created by the people themselves by the said constitutional amendment authorizing the consolidation of offices and it can in due time be remedied by the legislature. In the meantime, the constitutional provision must prevail.

In my opinion your second question should be answered in the negative. See my opinion to County Attorney Murphy, dated June 27, 1936, No. 306.