

Opinion No. 368.**County Assessor—Vacancies—County Commissioners, Duties Of.**

HELD: Where the County Assessor was holding office by appointment before the general election and no special election was called to fill the vacancy, a second vacancy exists after the general election and it is the duty of the county commissioners to fill that vacancy by appointment for the remainder of the term.

November 12, 1936.

Mr. G. R. Taylor
Terry, Montana

We are in receipt of your letter of November 7, in which you advise that you have been elected county assessor; that the present county assessor is holding office by appointment; that the county attorney is absent from the state. You inquire whether you are entitled to immediately take possession of your office, or whether a vacancy now exists which the county commissioners shall fill until the first Monday in January.

The law upon this subject is to be found in the case of *State ex rel. Rowe v. Kehoe*, 49 Mont. 582, which interprets Section 5 of Article XVI, of the Constitution. From such opinion it would appear that an election might have been called to fill the unexpired term from the date of election to the first Monday in January, 1937. Apparently that has not been done. Referring to the case in question, we would quote as follows: "Accordingly, since the convention declared that one appointed to fill a vacancy in a county office shall hold office until the next general election, it is our duty to so declare. It was, therefore, out of the power of the legislature to ignore the provision in question and provide that appointees to fill vacancies should hold for the remainder of the regular term. * * *" (page 589.)

Further in the opinion we find the following: "* * * It may happen that if the officers vested with the authority to order and give notice of an election, fail in their duty, a second vacancy will arise upon the occurrence of the election. * * *" (page 589.)

Therefore, a vacancy now exists in the office of county assessor in your county.

"* * * Upon the happening of any of these contingencies it would be the manifest duty of the board of commissioners to fill the vacancy. * * *" (page 590.)

Therefore, it is the duty of the county commissioners of your county to fill the vacancy in the office by appointment until the first Monday of January, 1937.

In the meantime, the present county assessor will continue to hold office until such vacancy is so filled by new appointment.