

**Opinion No. 327.**

**Counties — Classification — Offices and  
Officers—Elections—Auditor,  
Term of Office.**

HELD: In counties of the fourth class under Section 4741, R. C. M. 1935, the Board of County Commissioners, proceeding under Section 4742, R. C. M. 1935, create and bring into existence the office of County Auditor.

2. The office of County Auditor shall be filled at the general election following the creation of the office. The term shall be two years.

3. The method of nomination shall be by petition or names may be written in on the regular ballot.

August 25, 1938.

Mr. Harold K. Anderson  
County Attorney  
Helena, Montana

tion has passed the candidates will either have to petition under Section 621, and file as independent candidates, or proceed by the method of writing in.

Dear Mr. Anderson:

Your letter, submitting the proposition as to whether there should be a county auditor elected in Lewis and Clark County at the coming election, has been received. You state in your letter that the board of county commissioners will, at its regular meeting in September, make an order pursuant to Section 4741 and 4742, R. C. M. 1935, designating Lewis and Clark County as a county of the fourth class.

Conceding that the county has the valuation required by Section 4741 requisite to make it a county of the fourth class, there can be no question as to its being entitled to a county auditor (Section 4824). While the office of county auditor does not come under a constitutional provision, it is provided for under Section 6 of Article XVI, and has been held by our courts to have been legally created as per such section, and the term of office to be not exceeding two years. (State ex rel. McGinniss v. Dickinson, 26 Mont. 391, 392.)

You then ask whether the office should be filled by appointment or by election. We refer you to State ex rel. Hauswald v. Ellis, et al., 52 Mont. 505, 159 Pac. 414. The case is identical in that at the September meeting of 1914 of the commissioners of Carbon County, a formal order was spread upon the minutes of the meeting, declaring Carbon County to be a county of the fifth class. By virtue of this classification, if properly made, there came into existence, says the court, the office of county auditor for said county. The names of the candidates were submitted at the general election held in November of 1914, and F. A. Hauswald was duly elected to such office. I take it that the matter is generally submitted to the electors, when such is possible, under the constitutional provision that the people are entitled to elect their own officers (Section 531).

The proclamation of the Governor, calling the general election as of November 8, 1938, provides among other things for the election of county auditors in such counties as are entitled to such officers. Since the primary elec-