

Opinion No. 44.

Offices and Officers—County Treasurer, Term of Office.

HELD: All county treasurers elected at the general election November 8, 1938, are entitled to a four-year term, beginning March 6, 1939, and are ineligible to re-election for the succeeding term.

April 7, 1939.

Mr. Norman Storbeck
Clerk and Recorder
Malta, Montana

Dear Sir:

Your letter addressed to the secretary of state has been referred to this office with the request that a reply be sent directly to you.

You have called attention to the amendment to Section 5, Article XVI of the Constitution of Montana, increasing the terms of county officers from two to four years and say: "Our county treasurer has served one term already. Will he be entitled to a four-year term from the first day of March, 1939?"

Inasmuch as this question is of importance to many county treasurers in all parts of the state, I am treating this letter as if it had been a request for a formal opinion and this ruling will be authority for all county clerks and recorders faced with the problem about which you have asked.

Prior to November 8, 1938, Section 5 of Article XVI of the Constitution of Montana read in part as follows:

"There shall be elected in each county the following county officers:
* * * one treasurer, who shall be collector of the taxes, provided, that no person shall hold the office of county treasurer for more than two consecutive terms. * * * Persons elected to the different offices named in this section shall hold their respective offices for the term of two (2) years, and until their successors are elected and qualified."

At all times prior to November 8, 1938, any person otherwise qualified who had served one term as a county treasurer was eligible to run for election to a second term and if elected

eligible to serve. On November 8, 1938, Section 5, of Article XVI of the Constitution of Montana was amended by a vote of the people so that now the part of that section relating to county treasurers reads as follows:

"There shall be elected in each county the following county officers who shall possess the qualifications for suffrage prescribed by Section 2 of Article IX of this Constitution and such other qualifications as may be prescribed by law:

"* * * one treasurer, who shall be collector of taxes, provided, that the county treasurer shall not be eligible to his office for the succeeding term. * * * Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified." (Chapter 93, Laws of 1937.)

The difference in these two sections is instantly apparent. Section 5 of Article XVI formerly read "that no person shall hold the office of county treasurer for more than two terms." The provision now is "that the county treasurer shall not be eligible to his office for the succeeding term."

The Montana Supreme Court in construing this amendment declared, "that on and after the 8th day of November, 1938, there was but one term of office provided for the county officers referred to in the amendment to the Constitution then adopted, and that the four-year term immediately became effective and the two-year term ceased to exist at that time." (State ex rel O'Connell v. Duncan, 107 Mont. 141. Decided March 21, 1939.)

The county treasurer of any county in Montana who has served but one term was eligible to become a candidate for re-election for another term in 1938. On November 8, 1938, the "two-year term for county officers ceased to exist." (State ex rel O'Connell v. Duncan, supra.) Any county officer enumerated in Section 5, Article XVI of the Montana Constitution, as amended by Chapter 93, Laws of 1937, was elected to a four-year term. The office of county treasurer is one of those listed. Therefore, the term to which the county treasurer was elected was a four-year term beginning the

first Monday in March, 1939, and ending the first Monday in March, 1943. By the provisions of Section 5, Article XVI, as amended, no county treasurer is eligible for re-election to the succeeding term. The net result is that all county treasurers, whether candidates for their first or second terms, elected at the general election November 8, 1938, were elected to a four-year term of office and all are ineligible for re-election to the succeeding term.