

No. 151

STATE BOARD OF FORESTRY—FORESTRY,
STATE BOARD OF

Held: Chapter 141, Laws of 1941, changing qualifications of three memberships on State Forestry Board, does not require appointment of the four remaining members constituting the full seven membership board.

June 25, 1941.

Mr. Rutledge Parker
State Forester
Forestry Building
State University of Montana
Missoula, Montana

Dear Mr. Parker:

Your inquiry is in the following words:

"Reference is made to Section 1 of Chapter 141, Laws of 1941, in which there is an amendment to the membership of the State Forestry Board. Since Chapter 141 is an amendment and not a repeal of Chapter 128, Laws of 1939, I am wondering whether or not, under Section 1 of Chapter 141, there should be appointed a newly-constituted board. My interpretation of this amendment is that there will be no change in those members of the board not affected by the amendment. This would include one member that was appointed for four years representing the Water Conservation Board; one member that was appointed through the joint recommendation of the Montana Stock Growers' Association and the Montana Wool Growers' Association for a term of four years; one member appointed upon the recommendation of the Montana Lumber Manufacturers' Association for a period of four years; and one member recommended by the Regional Forester, Region One, U. S. Forest Service, appointed for a four-year period."

While it is true, generally speaking, a constitutional officer may not be legislated out of office (*McCawley vs. State*, 102 Tenn. 509, 53 S. W. 134; *Conner vs. Gray*, 88 Miss. 489, 41 So. 186), it is well established an office of legislative creation may be abolished by the power which created it. Where an office is created by statute, it is wholly within the control of the legislature and "is taken in full view of all the vicissitudes of legislative action, including removal for such cause as the legislative assembly may deem sufficient."

State ex rel. Bullock vs. District Court, 62 Mont. 600, 205 Pac. 955;

People ex rel. Robertson vs. Van Gaskin, 5 Mont. 352, 6 Pac. 30;

State ex rel. Nagle v. Sullivan, 98 Mont. 425, 40 Pac. (2nd) 995;

Hall v. Wisconsin, 103 U. S. 5, 26 L. Ed. 302.

The office of membership on the State Forestry Board is not a constitutional office and is a creature of statute. The legislature could, and did, by the enactment of the amendatory measure, Chapter 141, Laws of 1941, abolish three of the memberships on the Board, as it existed prior to that time, by changing the qualifications of three of the members to be appointed. As you have stated, the qualifications of four of the members of the Board were not changed. The portion of the old law carried forward into Chapter 141, prescribing the same qualifications for four of the members, is not new law, but has been the law from the beginning.

State v. Jacobson, 107 Mont. 461, 86 Pac. (2nd) 9;

In re Wilson's Estate, 102 Mont. 178, 56 Pac. (2nd) 733.

No change is necessary, therefore, by reason of Chapter 141, as to the four memberships on the State Forestry Board to which you refer.

Sincerely yours,

JOHN W. BONNER
Attorney General