

No. 247

COUNTY TREASURERS—TERMS OF OFFICE

Held: A person who has been appointed by the county commissioners to fill out the unexpired term of a county treasurer who has resigned is eligible to be a candidate for the office of county treasurer at the next general election, and the constitutional prohibition found in Section 5, Chapter 93, Laws of 1937, providing a county treasurer shall not be eligible to his office for the succeeding term, applies only to county treasurers who were elected and not to those who were appointed to fill out an unexpired term.

September 19, 1941.

Mr. Fred C. Gabriel
County Attorney
Phillips County
Malta, Montana

Dear Mr. Gabriel:

Recently you wrote to this office as follows:

"At the time of holding the last general election, M. R. Nelson had held the office of county treasurer two years, and was re-elected to that office for a second term.

"In the case of State ex rel. O'Connell v. Duncan, 88 Pac. 73, the Supreme Court of Montana held that 'When the amendment went into effect on November 8, 1938, county officers referred to in the amendment no longer existed for a two year term, and, necessarily, the relator and all others in whose behalf he brought this proceedings were elected for a four year term . . .'

"The above language included the county treasurer, and M. R. Nelson, like many other county treasurers, began his second term of office, which second term was for four years, and if he had completed his term as other county treasurers under like circumstances are now doing, he would have held office as treasurer for six years:

"Nelson recently resigned his office to accept a better position, and the county commissioners have appointed Charles Secrest as County Treasurer to complete the four-year term. If Secrest completes the term he will have served about eighteen months and the question presented is whether or not Secrest may lawfully be a candidate for the office of Treasurer at the election to be held in the fall of 1942?

"I have read with interest Opinion No. 176, but do not think the same fact situation exists and upon a closer study of the O'Connell case, I believe I am warranted in submitting the following observation:

"In the case of State ex rel. Teague v. Board of County Commissioners, 43 Mont. 426, the Supreme Court in effect held 'That the right to extend the time of officers after their election rests in the people.'

"Referring to Section 5 of Chapter 93, 1937 Session Laws, it reads: 'There shall be **elected** in each county the following officers—one treasurer who shall be collector of taxes, provided, that the county treasurer shall not be eligible to his office for the succeeding term

... "I call your attention to the word 'elected.' Mr. Secrest not having been **elected**, but appointed, and the period of his service being comparatively short, it is my opinion that he may be a candidate for the office of treasurer, because he is not a candidate for a 'succeeding term' as contemplated by the amended constitution. I assume a 'term' means four years as the statute now stands, and he not having held it a 'term' he could not be spoken of as a candidate for a 'succeeding term.' In other words, he may not be twice consecutively elected, but he may be once elected even though he be appointed to fill in a vacancy."

I have read and studied the statutes and cases to which you referred in your letter and have given considerable thought thereto, and therefore I concur in your opinion a person who has been appointed by the county commissioners to fill out the unexpired term of a county treasurer who has resigned is eligible to be a candidate for the office of county treasurer at the next general election, and the constitutional prohibition found in Section 5, Chapter 93, Laws of 1937, providing that a county treasurer shall not be eligible to his office for the succeeding term, applies only to county treasurers who were elected and not to those who were appointed to fill out an unexpired term.

Sincerely yours,

JOHN W. BONNER
Attorney General