

No. 367

COUNTIES—OFFICERS AND OFFICES—
CONSOLIDATION OF OFFICES

Held: Under the authority of Section 5 of Article XVI of the Montana Constitution, county commissioners have the power and authority to re-group the offices to be consolidated within their county or to separate offices once consolidated, since the consolidation of offices does not abolish them, and the authority to consolidate includes the authority to separate in the event such separation becomes necessary or expedient.

March 2, 1942.

Mr. Arthur E. Erickson
County Attorney
Sheridan County
Plentywood, Montana

Dear Mr. Erickson:

The Board of County Commissioners of Sheridan County in 1936 consolidated the offices of County Clerk, County Treasurer and County Assessor. At the December meeting in 1941 the said Board separated the office of County Treasurer from the offices of County Clerk and County Assessor. At its meeting last month the said Board passed a resolution consolidating the offices of County Clerk and County Assessor and the offices of Sheriff, Coroner, Surveyor and Public Administrator. The question put by you is whether, after consolidating offices, the Board of County Commissioners has the power to separate such offices and, in its discretion, consolidate them in a different manner.

The authority for consolidating county offices is found in Section 5 of Article XVI of the Constitution of Montana, which provides, in part:

“. . . provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two (2) or more of the within named offices and combine the powers and duties of the said offices consolidated . . .”

Chapter 361 of the Political Code, Volume One, Revised Code of Montana, 1935, also relates to the consolidation of county offices and the filing of a petition by the electors of a county to that end. Section 4749.4 of the Revised Codes of Montana of 1935, included in that chapter, specifically states the right of the County Commissioners to consolidate offices without a petition is not affected by the legislation.

No office is abolished by Article XVI, Section 5, of the State Constitution—but the powers and duties of the two or more offices combined are merely vested in one person. This was observed in Opinion No. 306, Vol. 16 of the Opinions of the Attorney General. Changes in the conditions of any county might require a different combination of offices by addition of duties of another office or additional offices to the holder of a consolidated office or, on the other hand, might require the holder of a consolidated office be relieved of the duties of one or more of the offices consolidated. Since the offices are not abolished, a re-grouping of offices by means of consolidation is not prohibited. It has been held uniformly the powers which a board can exercise are not confined to those expressly granted by the Constitution or statutes but such board has, by implication, such powers as are necessary for the efficient exercise of those expressly granted. (*Guillot v. State Highway Commission*, 102 Mont. 149, 154, 159, 56 Pac. (2nd) 1072.) The power to consolidate offices was undoubtedly given to boards of county commissioners as a means of effecting economy consistent with the efficient transaction of county business. If the Board of County Commissioners, in its discretion, deems the interests of the county to require a re-grouping of consolidated offices, such action is consistent with the power granted by the constitution.

It should be borne in mind, however, in the consolidation of the offices, a person elected to fill the consolidated office must have the qualifications to hold any and all of the offices included in such consolidation.

It is my opinion that, under the authority of Section 5 of Article XVI of the Montana Constitution, county commissioners have the power and authority to re-group the offices to be consolidated within their county or to separate offices once consolidated, since the consolidation of offices does not abolish them, and the authority to consolidate includes the authority to separate in the event such separation shall be deemed necessary or expedient.

Sincerely yours.

JOHN W. BONNER
Attorney General