

No. 389

COUNTIES, consolidation of county offices—OFFICES AND OFFICERS—CONSOLIDATION OF OFFICES, procedure for—HEARING—ORDER—PETITION

- Held: 1. No hearing is required in order to consolidate county offices, in the event proceedings are not instituted by a petition, but it is only necessary to follow the provisions of Section 5, Article XVI of the State Constitution.
2. In the event a petition, asking for consolidation of offices, is presented not later than seven (7) months before the date of election, a hearing and order may be had at any time in accordance with the statute and upon the notice required thereby, as long as the order is made six (6) months prior to the general election and is published as required by the Constitution.

April 3, 1942.

The Board of County Commissioners
Liberty County
Chester, Montana
Attention: Mr. Hilmer Johnson, Chairman

Gentlemen:

On March 2, 1942, the County Commissioners of Liberty County attempted to consolidate the offices of sheriff, coroner and public administrator without a petition having been filed. These questions have arisen:

1. May the Board order consolidation without a hearing if action is not based on a petition?
2. If a petition is presented must a hearing be held and an order made not less than seven (7) months before the next general election at which county offices are to be elected or may a hearing be had and an order made any time provided a petition is filed not less than seven (7) months before the said general election?

Consolidation of county offices is authorized, not by the statutes enacted as Chapter 125 of the Laws of 1935, which are now Chapter 361 of the Political Code of the Revised Codes of Montana of 1935, but by the amendments to Section 5 of Article XVI of the Montana Constitution.

Section 4749.4 of the Revised Codes of Montana of 1935 specifically provides the statutory enactments relating to petition and hearing for consolidation of county offices shall not be "deemed as limiting in any manner the discretion of the county commissioners to consolidate the several offices named in the aforesaid article of the constitution, without the filing of the petition provided for in this act."

The hearing provided for in Section 4749.2 and 4749.3 of the Revised Codes of Montana, 1935, is a hearing on the petition; and, if no petition is filed or used in the proceedings for consolidation, then it must necessarily follow no hearing can or need be had.

It is the statute, Section 4749.1 of the Revised Codes of Montana, 1935, that provides the petition be filed not later than seven (7) months before the date of the election. The hearing must be had and the order made six (6) months before the general election at which the officers are to be elected. This is required by Section 5 of Article XVI of the State Constitution, and this requirement could not be altered by legislative enactment. The seven (7) months provision has no application except to the filing of the petition.

It is my opinion no hearing is required in order to consolidate county offices, in the event proceedings are not instituted by a petition, but it is only necessary to follow the provisions of Section 5, Article XVI of the State Constitution.

It is further my opinion that, in the event a petition asking for consolidation of offices is presented not later than seven (7) months before the date of election, a hearing and order may be made at any time in accordance with the statute and upon the notice required thereby, as long as the order is made six (6) months prior to the general election and is published as required by the constitution.

Sincerely yours,

JOHN W. BONNER
Attorney General