

No. 413

**OFFICES AND OFFICERS—CITIES AND TOWNS—
CANDIDATES—POLICE, Chiefs of—SHERIFFS**

Held: A duly appointed, qualified and acting Chief of Police in a city of the third class who desires to file as a candidate for the office of county sheriff need not resign the office of Chief of Police before becoming a candidate for the office of county sheriff, under Chapter 116, Laws of 1937.

May 11, 1942.

Mr. Bert W. Kronmiller
County Attorney
Big Horn County
Hardin, Montana

Dear Mr. Kronmiller:

You have requested the opinion of this office on the following problem:

B, a duly appointed, qualified, and acting Chief of Police in a city of the third class, desires to file as a candidate for the office of County Sheriff.

Under and by virtue of the terms of Chapter 116, Laws of 1937, must B resign the office of Chief of Police before becoming a candidate for the office of County Sheriff?

Chapter 116, Laws of 1937, has been before our Supreme Court only once since its passage by the twenty-fifth legislative assembly. See the case of *Mulholand v. Ayers*, 109 Mont. 558, 564, 99 Pac. (2nd) 234, 238, where Chapter 116 was declared unconstitutional and void "so far as it attempts to declare a vacancy in an office regularly expiring on the first Monday in January because the incumbent seeks an office at a municipal election in April." Our court ruled such an attempt conflicted with the equal protection clause of the Federal Constitution, and specifically noted its finding did not affect the remainder of the act.

Chapter 116, Laws of 1937, provides in part:

"Whenever any person holding, occupying, or discharging, de jure or de facto, the duties of any elective or appointive office of, or for, or under, or by virtue of the laws of the State of Montana, including the office of United States senator for Montana and the office of representative in congress for any congressional district of Montana or of any county office or position, the terms of which is longer than two (2) years, shall become a candidate for election to any elective office . . . , such person shall . . . resign said office, appointment, place, position . . . "

It must be noted the broad expression—"any person holding . . . the duties of any elective office or appointive office of, or for, or under, or by virtue of the laws of the State of Montana"—was qualified by the legislature when that body added "including the office of United States senator . . . the office of representative in congress . . . or of any county office or position." (Emphasis mine.)

To ascertain the intention of the legislature, recourse must first be had to the language employed by the legislature. (*McNair v. School District No. 1 of Cascade County*, 87 Mont. 423, 426, 288 Pac. 188, 69 A. L. R. 866.) Words and phrases used in the codes or other statutes of Montana are construed according to the context and the approved usage of the language. (Section 15, Revised Codes of Montana, 1935).

It seems apparent the legislature meant Chapter 116, supra, to apply to all state elective and appointive offices—and in addition to certain other offices and positions—which do not come within the exceptions noted in Section 3 of the act and the terms of which are no longer than two years. I am of the opinion that, since cities and towns were not mentioned in the act, the legislature did not intend the act should apply to them.

This view is strengthened by reading of the title of Chapter 116, Laws of 1937, which is in part:

“An act Providing That Any Elective or Appointive Officer of or for the State of Montana, or Any District of County Thereof Who Becomes a Candidate for Reelection to Any Office Then Occupied by Such Person, Shall at or Before Filing for Said Elective Office as Required by Law, Resign the Office, Appointment or Position Then Held”

Article V, Section 23, Constitution of Montana, provides the subject of a bill passed by the legislature shall be clearly expressed in the title of the bill (Volume One, Revised Codes of Montana, 1935). No mention is made in the title of Chapter 116, supra, to elective or appointive officers of cities or towns.

Although the word “district” is used in the title of Chapter 116, supra, I am of the opinion it here refers to congressional district, inasmuch as provision is made in section one of Chapter 116 that the act shall apply to the office of representative in congress. Furthermore, a city has been held not to be a district. (*City of San Bernardino v. Horton*, 173 Cal. 396, 160 Pac. 231.)

It is therefore my opinion B, a duly appointed, qualified, and acting Chief of Police in a city of the third class, need not resign the office of Chief of Police before becoming a candidate for the office of County Sheriff. If elected, B could not, however, serve in both capacities at one and the same time, inasmuch as the offices of Chief of Police and County Sheriff are incompatible. (See Opinion No. 127, page 96, Volume 15, Report and Official Opinions of the Attorney General.)

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General