

## No. 462

**COUNTIES—OFFICES AND OFFICERS—VACANCIES IN  
OFFICE—CORONER—CONSTITUTION**

**Held:** County Coroner—elected at the general election in 1940 to fill a vacancy in that office—holds his office for the terms of four (4) years, as provided by Section 5 of Article XVI of the Montana Constitution, as amended by the vote of the people at the general election held November 8, 1938.

August 5, 1942.

Mr. Fred W. Schmitz  
County Attorney  
Broadwater County  
Townsend, Montana

Dear Mr. Schmitz:

You have presented the following problem to this office:

X was elected to the office of Coroner on November 8, 1938. At the same election, an amendment of Section 5 of Article XVI of the Constitution was adopted by vote of the people, changing the term of office of Coroner from two to four years. The amendment was effective as of the election date and hence X was elected Coroner for a four-year term.

X died shortly after his election. Y was appointed coroner by the Board of County Commissioners. Y served under the appointment until the next general election in 1940, at which time he was elected coroner.

Was Y elected in 1940 for the unexpired term of X—or was he elected for a full four-year term?

Section 5 of Article XVI of the Montana Constitution, as amended by vote of the people at the general election held November 8, 1938, reads in part as follows:

“Section 5. There shall be elected in each county the following county officers who shall possess the qualifications for suffrage prescribed by Section 2 of Article XI of this constitution and such other qualifications as may be prescribed by law:

“ . . . one coroner; . . . Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified. Vacancies in all county, township and precinct offices, except that of county

commissioners, shall be filled by appointment by board of county commissioners, and the appointee shall hold his office until the next general election; . . .”

There is no doubt the coroner elected on November 8, 1938—the date of the adoption of the amendment quoted above—was elected for a four-year term.

“ . . . After the 8th day of November, 1938, there was but one term of office provided for the county officers referred to in the amendment to the Constitution then adopted, and the four-year term immediately became effective and the two-year term ceased to exist at that time. . . .”

State ex rel. O’Connell v. Duncan, 108 Mont. 141, 150, 88 Pac. (2nd) 73, 78.

But does the person elected to fill a vacancy acquire an office for a full four-year term or merely for the unexpired portion of his predecessor’s term?

The Montana Constitution has provided certain other officers—when elected to fill vacancies—should serve only during the unexpired term. (See Section 4 of Article XVI of the Constitution for such a provision in regard to county commissioners; and see Section 34 of Article VIII for such a provision in regard to judicial officers.)

When Section 5 of Article XVI of the Constitution was originally written, it was not contemplated that such a problem as now confronts us would ever arise in connection with county officers enumerated therein—for the officers there listed were all officers whose terms were for two years. Hence, whenever an officer appointed to fill a vacancy became a candidate at the “next general election,” he was seeking a regular term of office.

It must be noted the amendment to the above mentioned section of the Constitution did not include any provision that such an officer elected to fill a vacancy was to serve only the unexpired term in the case of county officers.

There is no statute applicable to the question here presented. The Legislative Assembly could easily have provided that, in the case of such vacancies filled at the next general election, such an elected officer holds the office for the unexpired term only. It did not so provide.

Inasmuch as the Constitution is silent on this particular situation and the Legislative Assembly has not spoken on the subject, the person who was here elected to the office of county coroner at the general election in 1940 had the right to assume he was elected to a four-year term, under the provisions of Section 5, of Article XVI of the Constitution. Apparently he thought—and the people who elected him were under the impression—he was a candidate for a four-year term. There was no mention on the official ballot of any provision restricting his term of office to a period shorter than that mentioned in Section 5 of Article XVI, *supra*.

I am aware of the dicta expressed in the cases of State ex rel. Rowe v. Kehoe, 49 Mont. 582, 589, 144 Pac. 162, and State ex rel. Morgan v. Knight, 76 Mont. 71, 77, 245 Pac. 267; but there the problems which faced the court was vastly different from the situation now presented.

Furthermore, if it is the sense of the Legislative Assembly that a rigid uniformity of elections is required, it is for that body to provide.

It is therefore my opinion your county coroner—elected at the general election in 1940 to fill a vacancy in that office—holds his office for the term of four (4) years, as provided by Section 5 of Article XVI of the Montana Constitution, as amended by the vote of the people at the general election held November 8, 1938.

Sincerely yours,

R. V. BOTTOMLY  
Attorney General