

**Opinion No. 34.****County Commissioners—Public Employees, Reemployment—Constable.**

Held: The board of county commissioners, under the authority of Chapter 47, Laws of 1941, has power to appoint some person "acting" constable to replace temporarily the regularly elected and qualified constable who is serving in the armed forces of the United States.

April 3, 1943.

Mr. Frank J. Roe  
County Attorney  
Silver Bow County  
Butte, Montana

Dear Mr. Roe:

You have requested my opinion whether the board of county commissioners has authority, under Chapter 47, Laws of 1941, to appoint some person "acting" constable in place of the regularly elected and qualified constable who is now serving in the armed forces of the United States.

Chapter 47, Laws of 1941, was an act to provide for the reemployment of elected officers and employees of the state of Montana and any political subdivision thereof. A constable is made a township officer by Section 4726, Revised Codes of Montana, 1935. The office is authorized by Article XVI, Section 6, of the Montana Constitution. Section 4728, Revised Codes of Montana, 1935, as amended by Chapter 134, Laws of 1939, provides such office be filled by election. Such officer is thus an elected officer of a political subdivision of the State of Montana, and comes within the provisions of Chapter 47, Laws of 1941, and the decision of our Supreme Court in *Gullickson v. Mitchell*, 113 Mont. 359, 126 Pac. (2nd) 1106.

Section 7 of Chapter 47, specifically provides the board of county commissioners, in the case of township officers elected from such county, shall appoint as "acting" officer some person to replace temporarily any elected officer designated in paragraph (b) of Section 1, who shall enter the military service in the manner set forth in that section—that is, by induction. (See Volume 19, No. 404, Report and Official Opinions of the Attorney General, for definition of "inducted.")

I therefore agree with your opinion that the board of county commissioners, under the authority of Chapter 47, Laws of 1941, has the power to appoint some person constable to temporarily replace the regularly elected and qualified constable who is now serving in the armed forces of the United States.

It is to be noted the Supreme Court held in *Gullickson v. Mitchell*, supra, that although Chapter 47, Laws of 1941, speaks of the appointment of "acting officers to temporarily replace" the elected officer, the appointee, although spoken of as an "acting" officer, takes the place of the elected officer and supplants him, although temporarily and indefinitely. During the period of his service under the appointment, then, the appointee is the constable for all purposes.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General