

officer elected to fill the consolidated office, and is not operative in combining the duties at the time the order is made. In the case presented, it is important to note the person elected to the consolidated office must be qualified to hold the office of county superintendent of schools.

April 25, 1946.

Mr. Peter M. Rigg
County Attorney
Liberty County
Chester, Montana

Dear Mr. Rigg:

You have requested my opinion concerning the effective date of an order of the county commissioners consolidating county offices. You advise me the county superintendent of schools has resigned and the commissioners contemplate combining that office with that of the county clerk. You ask if the order would be immediately effective so the clerk could assume the duties and receive the increased salary.

Section 5 of Article XVI of the Montana Constitution, as amended by Chapter 93, Laws of 1937, which amendment was adopted at the general election of November 8, 1938, grants the power to the board of county commissioners to consolidate county offices. The section states in part:

"Provided, further, that in consolidating county offices, the board of county commissioners shall, **six (6) months prior to the general election held for electing the aforesaid office**, make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks following the date of entry of said order." (Emphasis mine.)

The emphasized portion of the above quotation indicates the consolidated offices would be filled at the next general election and the order made by the commissioners would not consolidate the office until January of the year following the general election.

Opinion No. 145.

County Commissioners—County Offices—Offices, County—Superintendent of Schools—Clerk, County—Consolidation, County Offices.

Held: An order of consolidation of county offices made by the board of county commissioners is operative in combining the duties of two or more offices at the beginning of the term of the

If the order of the board of county commissioners were construed to be effective immediately, it would alleviate the situation in your county that now exists, but in the greater majority of instances, confusion would result as both offices would be filled; one of the incumbents would assume the duties while the other would be out of office.

In 11 Am. Jur. 659, the text states:

"A cardinal rule in dealing with constitutions is that they should receive a consistent and uniform interpretation, so that they shall not be taken to mean one thing at one time and another thing at another time, even though the circumstances may have so changed as to make a different rule seem desirable."

A prospective effect to the order of the board of county commissioners would not result in any incumbent being ousted, and it would be consistent with the interpretation placed on the provision by the legislature.

Section 4749.7, Revised Codes of Montana, 1935, as amended by Chapter 107, Laws of 1937, and Chapter 104, Laws of 1941, provides for the salary of the incumbent of a consolidated office. The section authorizes an increase in the salary and states in part as follows:

"... the board of county commissioners shall, at the regular meeting of such board in June, 1942, and at the regular meeting of such board in June of each fourth year thereafter, adopt a resolution fixing the salary of such officer for the term beginning with the first Monday in January immediately following the adoption of such resolution. . . ."

If the order of the commissioners consolidating the offices were construed to be effective immediately, then it is reasonable to assume an increase in salary would have been given as compensation for the increase in duties, but the above quoted permits the grant of the increase for the beginning of the next four-year term.

An additional indication of the legislative intention is found in Section 4749.6, Revised Codes of Montana, 1935, which reads in part as follows:

"Whenever any such order is made consolidating two or more of such offices it shall be the duty of the officers holding and occupying such offices, at the end of their term of office, to deliver and transfer to their successor, or successors, all of the books, files, papers, documents, maps, plats and records of such offices . . ." (Emphasis mine.)

If the order were effective immediately, then the incumbents would of necessity surrender their books and records at the time of the consolidation if orderly business procedure were to be followed. However, by the above quoted, the legislature contemplated the incumbents would finish their terms before the offices would be consolidated.

It is therefore my opinion an order of consolidation of county offices made by the board of county commissioners is operative in combining the duties of two or more offices at the beginning of the term of the officer elected to fill the consolidated office, and is not operative in combining the duties at the time the order was made. In the instant case, it is important to note the person elected to the consolidated office must be qualified to hold the office of county superintendent of schools.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General