

Opinion No. 159.**County Treasurer—Election, County
Treasurer—Term of Office, County
Treasurer.**

Held: A county treasurer, elected in 1944 for the unexpired term of the treasurer elected at the general election in 1942, does not come within the constitutional provision prohibiting the treasurer from being eligible to his office for the succeeding term.

May 21, 1946.

Mr. Bert I. Packer
County Attorney
Teton County
Choteau, Montana

Dear Mr. Packer:

You have requested my opinion in reference to the following facts:

The county treasurer who was elected in 1942 resigned after serving only a few months. The present county treasurer was appointed in August 1943 to serve until the next general election. At the general election in 1944 he was elected to

the office. You ask whether he is eligible for re-election at the general election in 1946.

The question is asked in view of the prohibition expressed in Section 5, Article XVI of the Montana Constitution, as amended by the vote of the people at the general election in 1938 (Chapter 93, Laws of 1939):

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

". . . one treasurer, who shall be collector of the taxes, provided, that the county treasurer shall not be eligible to his office for the succeeding term."

The present county treasurer's term of office expires at midnight March 2, 1947, that being the expiration date of the term of office of the county treasurer elected in 1942, and in consequence a county treasurer must be elected in Teton County at the coming general election in November, 1946, to serve for a four year term commencing on the first Monday of March, 1947. (*Bailey v. Knight* (Mont.), decided May 3, 1946.)

The question is whether or not the county treasurer, elected at the general election in 1944 for a period of two years, has served such a "term" as to come within the constitutional prohibition expressed above, "that . . . (he) shall not be eligible to his office for the succeeding term."

It is my opinion he has not served such a "term" contemplated by the Constitution, and he is eligible to be reelected at the coming election in November, 1946, for a term of four years.

The phrase "term of office" is one generally used to mean the fixed period of time for which the office may be held. (46 *Corpus Juris*, sec. 56, page 963.) Terms begin and end at fixed periods, and the several terms succeed each other at regular intervals and without intermission. (*State v. Hingle*, 6 La. A (Orleans) 380, 381.) The amendment to Section 5, Article XVI requires that officers named in this amendment be elected in each county each and every fourth year beginning

with the general election held on November 8, 1938, such officers to hold for a regular term of four years. The Montana Supreme Court in *State ex rel. O'Connell v. Duncan*, 108 Mont. 141, 150, 88 Pac. (2d) 73, said of the amendment:

"Our conclusion is that on and 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 that the four-year term immediately became effective and the two-year term ceased to exist at that time . . ."

The election of the county treasurer in November, 1944, for the unexpired term of the treasurer elected in 1942, was an election to fill a vacancy and is so regarded by the Constitution, Section 34, Article VIII, which says:

"A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected." (*Bailey v. Knight*, supra.)

As there is but one term of office provided for in the constitutional amendment—four years, and as the county treasurer was elected in 1944 for the unexpired term to fill a vacancy, it follows the county treasurer was not elected for such a term as to come within constitutional prohibition.

It is therefore my opinion that a county treasurer, elected in 1944 for the unexpired term of the treasurer elected at the general election in 1942, does not come within the constitutional provision prohibiting the treasurer from being eligible to his office for the succeeding term.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General