

Opinion No. 104**County Auditor — County Clerk and Recorder — Consolidation of
County Offices—Term of Office.****Held: 1. The offices of County Clerk and Recorder and County Auditor may not be consolidated.**

April 17th, 1950.

Mr. Robert F. Swanberg
County Attorney
Missoula County
Missoula, Montana

Dear Mr. Swanberg:

You have requested my opinion on the question of whether the Board of County Commissioners of Missoula County may consolidate the offices of County Auditor and County Clerk and Recorder.

The authority for the consolidation of county offices is contained in Section 5 of Article XVI of the Montana Constitution. Section 5 is as follows:

“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 County Clerk who shall be Clerk of the Board of County Commissioners and ex-officio Recorder; one Sheriff; one Treasurer, who shall be collector of taxes, provided that the County Treas-

urer, shall not be eligible to his office for the succeeding term; one County Superintendent of Schools; one County Surveyor; one Assessor; one Coroner; one Public Administrator. 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 the Board of County Commissioners, and the appointee shall hold his office until the next general election; provided, however, that the Board of County Commissioners of any County may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating County offices, the Board of County Commissioners shall, six (6) months prior to the general election held for the purpose of electing the aforesaid offices, 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 next following the date of entry of said order."

Sections 16-2501 through 16-2507, Revised Codes of Montana, 1947, set forth the procedure to be followed in consolidating County offices. Section 16-2501, *supra*, is as follows in part:

"At any time not later than seven (7) months before the date of any general election at which any of the County officers enumerated in Section five of Article XVI of the Constitution of this State are to be elected, a petition in writing may be filed with the Board of County Commissioners of a County asking for the consolidation of any two or more of said offices by the Board of County Commissioners of such County. . . ."

It will be noted that Section 5 of Article XVI of the Constitution provides that any two or more of the "within named" offices may be consolidated. The office of County Auditor is not one of the offices named in Section 5. The office of County Auditor is not a Constitutional office but rather was created by act of the legislature in 1891.

Section 16-2501, *supra*, also provides that any of the offices "enumerated in Section five of Article XVI" may be consolidated. Section 16-2501 was enacted by the legislature in 1935, some forty-five years after the office of County Auditor had been created, and if it had been the intention of the legislature that the office of County Auditor be included among those offices that may be consolidated, it would have used more appropriate and definite language. By limiting the offices which may be consolidated to those enumerated in Section 5 of Article XVI of the Constitution, the framers of the Constitution and

the lawmakers have definitely excluded the office of County Auditor from the list of offices that may be consolidated.

In addition to the absence of Constitutional and Statutory authority for consolidating the office of County Auditor with another County office there is a further difficulty that is present in the instant situation. Section 5 of Article XVI of the Constitution provides that the County Clerk and Recorder shall hold office for a term of four years. The office of County Auditor was created under the authority of Section 6 of Article XVI of the Constitution. State ex rel. McGinnis v. Dickinson, 26 Mont. 391, 68 Pac. 468. Section 6 of Article XVI provides that the terms of all offices created thereby shall be as prescribed by law, and shall not in any case exceed two years. Thus, although Section 16-3203, Revised Codes of Montana, 1947, provides that the term of office of the County Auditor shall be four years, such provision of Section 16-3203 is rendered inoperative by virtue of the limitation imposed by Section 6 of Article XVI. The term of office of the County Auditor can only be for two years. Volume 4, Page 434 and Volume 23, Opinion No. 96, Reports and Official Opinions of Attorney General.

The law does not provide for and I know of no procedure to be followed in consolidating a two year office with a four year office. Any decision to set the term of such consolidated office, whether it be for a two year or a four year term, would be arbitrary and without support in law.

For the reasons above stated, I am of the opinion that the offices of County Clerk and Recorder and County Auditor may not be consolidated.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.