

Opinion No. 130**County Treasurers—Term of Office—Appointment to Fill Vacancies—
Constitutional Law.**

Held: The County Treasurer-elect may be appointed to fill out the unexpired term of the incumbent and still hold office for the full term for which he was elected without contravening Section 5, Article XVI of the Montana Constitution.

October 27th, 1950.

Mr. Don A. Nash
County Attorney
Gallatin County
Bozeman, Montana

Dear Mr. Nash:

You have requested my opinion on the following question:

If the County Treasurer-elect were appointed on January 1, 1951 to fill out the unexpired term of the present incumbent from January 1, 1951 to March 1, 1951, could he then hold office as an elected official for the term to which he was elected in view of Section 5, Article XVI of the Montana Constitution, as amended?

Section 5, Article XVI of the Montana Constitution, as amended, provides in part, 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 treasurer, who shall be collector of the taxes, provided, that the County Treasurer shall not be eligible to his office for the succeeding term; . . ."

This question has been presented to my predecessors in office on different occasions. In Opinion 247, Volume 19, Report and Official Opinions of the Attorney General it was held by the Hon. John W. Bonner, that:

"A person who has been appointed by the County Commissioners to fill out the unexpired term of a County Treasurer who has resigned is eligible to be a candidate for the office of County Treasurer at the next general election, and the Constitutional prohibition found in Section 5, Chapter 93, Laws of 1937, providing a County Treasurer shall not be eligible to his office for the succeeding term, applies only to County Treasurers who were elected and not to those who were appointed to fill out an unexpired term."

Again in 1944 the same question was presented to the Hon. R. V. Bottomly and in Opinion 212, Volume 20, Report and Official Opinions of the Attorney General, it was again held that the Constitutional prohibition applied only to County Treasurers who were elected and not to appointees.

I concur in the interpretation placed on Section 5, Article XVI of the Montana Constitution, as amended, in the above cited Opinions. Therefore, it is my opinion that the County Commissioners of Gallatin County may, if they so desire, appoint the County Treasurer-elect to fill a vacancy in that office on Jan. 1, 1951 and that the County Treasurer-elect may then assume his duties on March 1, 1951, as an elected official and hold office for the ensuing term without violating Section 5, Article XVI of the Montana Constitution, as amended.

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