

Opinion No. 142

Officers—Terms of Officers—Constitutional Law—Official Years.

Held: The provisions of Section 16-2406, Revised Codes of Montana, 1947, providing that the officers mentioned in that section must take office on the first Monday of January next succeeding their election, except the County Treasurer, whose term begins on the first Monday of March next succeeding his election, do not contravene the provisions of Art. XVI, Section 5 of the Montana Constitution, which provides that these officers shall hold office for the term of four (4) years.

December 23rd, 1950.

Mr. Charles B. Sande
County Attorney
Yellowstone County
Billings, Montana

Dear Mr. Sande:

You have requested my opinion on a problem that has arisen in your County and which is of equal importance in all of the other counties of the State of Montana. The problem arises out of an apparent conflict between the provisions of Section 16-2406, Revised Codes of

Montana, 1947, and Article XVI, Section 5 of the Montana Constitution regarding the length of the term of office of the elected public officers mentioned in these two provisions. To illustrate the problem you state that the present Sheriff of Yellowstone County was elected to that office at the general election held in November, 1946, and took office on the first Monday in January, 1947. In 1947 the first Monday in January was January 6th. The Sheriff was not re-elected at the last general election and according to the provisions of Section 16-2406, *supra.*, the newly elected Sheriff will assume office on the first Monday in January of 1951, which happens to be January 1st. Since Art. XVI, Section 5, provides that the Sheriff shall hold his office for four (4) years, you are of the opinion that Section 16-2406 is unconstitutional as the present Sheriff is being deprived of five days of the term guaranteed him by the Constitution.

Article XVI, Section 5 of the Constitution 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 County Clerk who shall be Clerk of the Board of County Commissioners and ex-officio recorder; one sheriff; one treasurer, who shall be a collector of the taxes, provided that the County Treasurer 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. . . .**" (Emphasis supplied.)

Section 16-2406, Revised Codes of Montana, 1947, is a restatement of the provisions of Article XVI, Section 5 of the Constitution except that immediately following the above quoted portion of Article XVI, Section 5, the following paragraph is inserted in the statute:

"The County Attorneys, County Auditors, and all elective township officers, must be elected at each general election as now provided by law. The officers mentioned in this act must take office on the first Monday of January next succeeding their election, except the County Treasurer, whose term begins on the first Monday of March next succeeding his election."

This paragraph was formerly Section 4728, Revised Codes of Montana, 1935, and was originally enacted as Section 4315, Pol. C. 1895. Article XVI, Section 5 of the Constitution was amended by an act approved March 12, 1937 (Chapter 93, Session Laws 1937) and approved by the people at the general election in November 1938. This amendment changed the terms of certain officers from two to four years. At the next session of the Legislature in 1939, Section 4272, Revised Codes of Montana, 1935, was amended and the exact words of the new Con-

stitutional amendment were enacted into law as a statute but the provisions of Section 4728, *supra*, were also included in the new statute. Thus, it seems clear that the Legislature intended that the four-year term provided for in the Constitutional amendment meant a term beginning on the first Monday in January next succeeding the general election and extending to the first Monday in January four years later.

Since Article XVI, Section 5 of the Constitution, as it was originally written by the Constitutional Convention, provided that the officers enumerated therein should hold their respective offices for a term of two years, the solution to the problem posed in your request requires a determination of what the Constitution framers intended when they used the word "years." If the framers meant two years of 365 days each, then clearly that portion of Section 16-2406 quoted herein is unconstitutional as it is well settled that the Legislature may not lengthen or shorten a term of an officer if the term has been established by the Constitution. *State ex rel. Rowe v. Kehoe*, 49 Mont. 582, 144 Pac. 162.

However, it is my opinion that the framers of the Constitution did not intend that an elected official should hold office for two years of 365 days each, but rather meant that they should hold office from the beginning of the official year immediately after their election to the beginning of the official year two years later, and the day established for the beginning of the official year is the first Monday in January. Prior to the adoption of the Constitution the County elections were held in the month of August and the elected officers took office on the third Monday in December, except the County Treasurer whose term began on the first Monday in March next ensuing his election. See *Compiled Statute of Montana, General Laws, Chapter LIX, Section 1040*. The framers of the Constitution were aware of the existing practice of beginning terms of office on a Monday of a certain month rather than on a specified date. There was a great deal of debate in the convention as to whether a general election would be held at the same time that the Constitution was submitted to the voters for approval. Some of the delegates felt that a partisan political campaign might jeopardize the approval of the Constitution by the voters. However, it was decided that a general election should be held at the same time and so the Convention adopted Ordinance II, on Elections.

The pertinent portions of Ordinance II are as follows:

"Be it Ordained by the Convention assembled to form a Constitution for the State of Montana:

First. That an election shall be held throughout the territory of Montana on the first Tuesday of October, 1889 for the ratification or rejection of the Constitution framed and adopted by this convention. . . .

Ninth. There shall also be elected at the same time the following County and township officers: Three County Commission-

ers, one Clerk of the Board of Commissioners and ex officio recorder, one sheriff, one County treasurer, one County superintendent of common schools, one County surveyor, one County assessor, one coroner, one public administrator, one County attorney, two justices of the peace, and two constables for each township. The terms of office for the above named officers shall begin upon the admission of the State **and end upon the first Monday of January, A. D. 1893**, except as to County treasurer, whose term shall begin on the first Monday of March succeeding his election and end on the first Monday of March, A. D. 1893, and also as to County Commissioners, whose terms are otherwise provided for in this Constitution."

Thus, it seems apparent that the beginning of the official year was changed from the third Monday in December to the first Monday in January. An ordinance appended to a Constitution has the same force and effect as a Constitutional provision. *State ex rel. Thompson v. Kenney*, 9 Mont. 223, 23 Pac. 733. Hence, it is my opinion that when the Legislature in 1895 enacted Section 4315, Pol. C. 1895, which later became Section 4728, Revised Codes of Montana, 1935, *supra*, that it was following the policy set forth by Ordinance II, namely, that the official year should end on the first Monday in January. I am led to this conclusion by the fact that the original statute was modelled after Section 4109 of the California Political Code.. However, the California statute provided that the official year would end on the first Monday after the first day of January. The Montana Legislature, however, did not provide that the terms should begin on the first Monday after the first day in January, but simply said the first Monday in January, thus following the policy established by the Constitution makers in Ordinance II.

While it is true that generally the word "years" refers to calendar years of 365 days each, still it is not uncommon for the Courts to assign a different meaning when the context in which the word is used demands a different meaning. "Official year" generally does not mean "calendar year" as it is common for the official year to begin and end on a certain day of the week rather than any specific date. See 45 Words and Phrases 650.

The Supreme Court of Utah in the case of *Crockett et al. v. Tuttle*, 58 Utah 213, 197 Pac. 900, was faced with a similar problem in interpreting their Constitution. The Court held that the Constitution which fixed the term of officers as beginning on the first Monday in January after election and fixing the tenure in "years" meant official as contradistinguished from calendar years.

Therefore, it is my opinion that the word "years" as used in Article XVI, Section 5 of the Montana Constitution means official years and not calendar years and the officers enumerated in that section hold of-

office from the first Monday in January after their election to the first Monday in January four years later.

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