

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

In Volume 19, Official Opinions of the Attorney General, Opinion No. 247, it was held that a person who had been appointed to fill out an unexpired term of a county treasurer who had resigned was eligible to be a candidate for the office of county treasurer at the next election. The rationale of this opinion was that the prohibition against succession only applied to treasurers who had previously been elected, and not to appointees. This opinion was followed in Volume 20, Official Opinions of the Attorney General, Opinion No. 212 and Volume 23, Official Opinions of the Attorney General, Opinion No. 130. Since there have been no Supreme Court decisions on the question it is established in Montana that an appointee to fill out a vacancy may hold office for the succeeding term.

Opinion No. 159, Volume 21 of the Official Opinions of the Attorney General held that a County Treasurer, who had been elected in 1944 to fill an 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. This opinion was based in part on the case of *Bailey v. Knight*, 118 Mont. 594, 168 Pac. (2d) 843. The *Bailey* case held that a person who was appointed county sheriff to fill a vacancy caused by the death of his predecessor and at the next general election was elected sheriff, was elected only to fill the unexpired term of his predecessor and not for a full four year term. Hence, Opinion 159, supra, reasoned that whether a person had been appointed or elected to fill an office for an unexpired term he was not serving his own term and was therefore eligible to be elected to the office for the succeeding term.

However, Opinion 212, Volume 20 of the Official Opinions of the Attorney General, also held that an elected holder of a full term of office of county treasurer could not be a candidate for the office until a full term of four years had elapsed. The question which you ask is a further ramification of

Opinion No. 35

County Treasurers—Constitutional  
Law—Public Officers

**Held: A County Treasurer who has been elected and serves a complete four years term is ineligible to be appointed to fill a vacancy existing in that office during the succeeding four year term.**

August 17th, 1951.

Mr. J. E. McKenna  
County Attorney  
Fergus County  
Lewistown, Montana

Dear Mr. McKenna:

You have requested my opinion on the following question:

"May the Board of County Commissioners appoint as County Treasurer a man who had previously been elected County Treasurer, and served from March, 1947, to March, 1951, to fill the vacancy created in that office because of the resignation of the present County Treasurer?"

The Constitutional provision that presents a problem in this situation is Article XVI, Section 5 of the Constitution of Montana, which provides in part as follows:

\*\*\*\* There shall be elected in each county the following officers \*\*\* one

the same problem and we must determine if an elected holder of a full term of office as county treasurer may be appointed to fill a vacancy in that office at any time within the succeeding term.

The pertinent portions of Article XVI, Section 5 supra, as they bear on the problem presented, are:

"There shall be elected \*\*\* one treasurer \*\*\* provided the county treasurer shall not be eligible to his office for the succeeding term; \*\*\*\*"

The framers of the provision contemplated that a treasurer would be elected every four years, as that is the term of office prescribed for the county treasurer. The proviso in this clause says that the treasurer shall not be eligible to his office, and obviously refers to the county treasurer who has been elected for a full term. Further, it is my opinion that the plain words of the provision require the conclusion that this officer, (i. e., the treasurer who has been elected for a full term), shall not be eligible to his office for the succeeding term. Since the succeeding term is four years, it follows that a treasurer who has been elected for a full term may not again hold the office until four years has elapsed from the end of his term.

There is a reason for distinguishing between the person who has been elected to a full term and one who has been appointed to fill a vacancy or an unexpired term. It may be difficult to fill a vacancy, especially if the tenure is to be of short duration, if the appointee is barred from seeking the office as a candidate for a full term. On the other hand, the person who is elected to a full term is put on notice that he will not be eligible to hold the office for the succeeding term.

Therefore, it is my opinion that a county treasurer who completes a full term for which he was elected on March 3, 1951, is not eligible to be appointed County Treasurer on July 1, 1951, to fill out the vacancy created by the resignation of his successor.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General