

Opinion No. 8

COUNTY COMMISSIONERS; Vacancy; creation of—COUNTY COMMISSIONERS; Powers; consolidation of offices—COUNTY AUDITORS; Election; duty to elect in fourth class county—COUNTY AUDITORS; Powers; consolidation with other offices—ELECTIONS; County Classification Change; failure to elect auditor—Sections 16-2406 and 16-3201, Revised Codes of Montana, 1947—Article XVI, Section 5, Montana Constitution

- Held:**
- 1. When a county is established as a county of the Fourth Class it must have an office of County Auditor.**
 - 2. When through oversight, there has been no election for the office of County Auditor in a county of the Fourth Class, and there is no incumbent to this office, a vacancy exists which must be filled immediately by the County Commissioners.**
 - 3. The office of County Auditor is excluded from the list of county offices which may be consolidated.**

March 31, 1959

Mr. Hugh N. Marron
County Attorney
Roosevelt County
Wolf Point, Montana

Dear Mr. Marron:

Your office has requested my opinion on certain questions which have arisen in connection with the recent act of the County Commissioners establishing Roosevelt County as a county of the fourth class. You state that through oversight no election was had for the office of auditor during the last general election and that the following questions are now presented:

- (1) Under the authority of Section 16-3201, RCM, 1947, must Roosevelt County, as a county of the fourth class, have a County Auditor?
- (2) Under the authority vested in the Board of County Commissioners, must they immediately appoint a County Auditor, or may they wait until the next general election to place the name of Auditor on the ballot?
- (3) Under Section 16-2406 and under Article XVI, Sec. 5 of the Constitution, is it possible for the Board of County Commissioners to combine the office of County Auditor with the office of Clerk and Recorder, or one of the other offices in the county?

With regard to your first question, Section 16-3201, *supra*, provides, in part, that:

"The office of county auditor is hereby created and **the same shall exist in all counties** of the state of Montana of the first, second, third and fourth classes. ****" (Emphasis supplied)

This statute, in my opinion, can only be interpreted as meaning that a county reaching the fourth class **must** have an office of County Auditor. (Compare, *Abshire vs. School District*, 124 Mont. 244, 220 Pac. (2d) 1058.)

The above quoted statute compels the existence of the office of auditor in a county of the fourth class. When there is no incumbent to this office, and no election was held for the office, a vacancy exists which must be filled immediately by the County Commissioners. (Sec. 16-2406, RCM, 1947; *State ex rel. Rowe vs. Kehoe*, 49 Mont. 582, 589, 144 Pac. 162.)

The third question was considered in 23 Opinions of the Attorney General, 278, No. 104 (1950). In that opinion it is held that:

"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."

It is therefore my opinion that:

- (1) When a county is established as a county of the fourth class it must have an office of County Auditor.
- (2) When, through oversight, there has been no election for the office of County Auditor in a county of the fourth class, and there is no incumbent to this office, a vacancy exists which must be filled immediately by the County Commissioners.

- (3) The office of County Auditor is excluded from the list of county offices which may be consolidated.

Very truly yours,
FORREST H. ANDERSON
Attorney General