

**Opinion No. 52**

**COUNTY ATTORNEYS; term of office; OFFICES AND OFFICERS; term of office; CONSTITUTIONAL LAW; Amendment of Constitution, effective date; Chapter 93, Laws of 1937; Chapter 164, Laws of 1961; Constitution Article XVI, Section 5; Article VIII, Section 19.**

**Held: County attorneys elected to office at the general election of November 6, 1962, will hold office for a four year term commencing on the first Monday of January, 1963.**

November 21, 1962

Mr. Thomas J. Hanrahan  
County Attorney  
Lewis and Clark County  
Helena, Montana

Dear Mr. Hanrahan:

You, and several other county attorneys, have requested my opinion on the following question:

What is the length of term of office for the county attorneys elected at the general election of November 6, 1962?

This question is presented by the fact that the voters of Montana amended Article VIII, Section 19, of the Constitution at the same time that they elected county attorneys for a term of office commencing on the first Monday of January of 1963.

This question is not without precedent in Montana. In 1937 the Twenty-Fifth Legislative Assembly enacted Chapter 93, Laws of 1937, which provided that an amendment to Article XVI, Section 5, of the Constitution, be submitted for the voters approval at the general election held in November of 1938. That amendment proposed that the term of office be changed from two to four years for the county clerk, the sheriff, the treasurer, the superintendent of schools, the surveyor, the assessor, the coroner, and the public administrator. The proposal was adopted by the electorate at the same general election which elected these officers. That amendment and the amendment here under consideration are in every respect identical. In each case the only change was the substitution of the words and figures, "four (4)," for the words and figures, "two (2)." After the general election of 1938 the question was presented to the Supreme Court of Montana as to whether the new four year term applied to officers elected at that general election.

Our Supreme Court in that case, *State ex rel O'Connell v. Duncan*, 108 Mont. 141, 88 P. 2d 73, held that Constitutional amendments of this nature were self-executing and took effect as of the day of the election. The Court said:

"Our conclusion is that on and after the 8th day of November, 1938, there was but one term of office provided for the county officers referred to in the amendment to the Constitution, then adopted and that the four-year term immediately became effective and the two-year term ceased to exist at that time, and hence, the relator is entitled to the relief prayed."

Therefore, it is my opinion that, the county attorneys elected to office at the general election of November 6, 1962, will hold office for a four-year term commencing on the first Monday of January, 1963.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General