

VOLUME NO. 36**Opinion No. 66****COUNTY COMMISSIONERS — Term of office when appointed; LOCAL GOVERNMENT STUDY COMMISSIONS — General election for county official; Sections 16-903, 16-5115.13, 23-2601, 23-2604, Revised Codes of Montana 1947.****HELD: The next general election for county officials will be held in 1977, and a county commissioner appointed to office until the next general election will hold office until the 1977 election.**

April 5, 1976

Mr. Ronald W. Smith
County Attorney
County of Hill
Havre, MT 59501

Dear Mr. Smith:

You have requested my opinion as to the length of a county commissioner's term who was appointed in 1975 to hold office until the next general election.

It is my understanding that Mr. Jack Swinney was elected to the office of county commissioner for a six-year term in 1972. The position was left vacant in 1975 upon Mr. Swinney's death. Mr. Robert Pester was then appointed by the district court judge to fill the vacancy.

Section 16-903, R.C.M. 1947 provides that when there is a vacancy in the board of county commissioners the appointee shall hold office until the next general election. A general election is defined in Montana to be "an election held for the election of officers throughout the state at times specified by law". Section 23-2601(2), R.C.M. 1947.

Section 23-2604, R.C.M. 1947 provides as follows:

A general biennial election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November.

Section 16-5115.13(1), R.C.M. 1947 provides as follows:

No primary or general election shall be held in 1976 for the election of county officials. The primary and general election for electing city, town and county officials shall be rescheduled as provided in this section.

Section 16-5115.13, *supra*, goes on to provide that local government primary elections will be on February 8, 1977 and the local government general election will be on April 5, 1977. The crucial question is whether the language "next general election" in section 16-903, *supra*, refers to the November 1976 election or, in view of section 16-5115.13, *supra*, the April 1977 election.

Section 16-5115.13, *supra*, clearly provides that there will be no primary or general election for county officials in 1976. The section further provides that these elections will be held in 1977. It is well established in Montana that when the terms of a statute are plain, unambiguous, direct, and certain, the statute speaks for itself and there is nothing to construe. **Montana Chapter, National Electrical Contractors Ass'n. vs. State Board of Education**, 137 Mont. 382, 352 P.2d 258 (1960)

Section 16-903, *supra*, provides that the appointee will hold office until the next general election. As has already been discussed, section 16-5115.13, *supra*, makes it clear that the next general election for county officials will be in 1977.

A further consideration is that if a candidate for the office were required to run in November 1976, it is possible he would be required to run again in February and April of 1977. Statutory and constitutional construction should not lead to absurd results if reasonable construction will avoid it. **State ex rel. Ronish vs. School Dist. No. 1 of Fergus County**, 136 Mont. 453, 348 P.2d 797 (1960).

THEREFORE, IT IS MY OPINION:

The next general election for county officials will be held in 1977, and a county commissioner appointed to office until the next general election will hold office until the 1977 election.

Very truly yours,

ROBERT L. WOODAHL
Attorney General