

**VOLUME NO. 36**

**Opinion No. 67**

**JUSTICE COURT — Justice of the peace, term of office; VACANCIES — Justice of the peace, term of office; Chapter 491, Laws 1973; Chapter 4, Title 93, Revised Codes of Montana 1947; Sections 16-2406, 93-406, 93-7605 and 93-7607, Revised Codes of Montana 1947.**

**HELD: An appointed justice of the peace will hold office for the remainder of the unexpired term pursuant to section 93-406, R.C.M. 1947.**

April 7, 1976

Mr. Harold F. Hanser  
County Attorney  
County of Yellowstone  
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

What is the length of term of office of an appointed Justice of the Peace?

This question was prompted by the death of the Honorable R.J. Williams, who had been elected to the office of justice of the peace in November, 1974 for a four year term. In January, 1976, the Honorable P.R. Hernandez was appointed by the Board of County Commissioners of Yellowstone County to fill the vacancy created by Judge Williams' death. This situation is not unique to Yellowstone County as other counties have had to appoint justices of the peace since the 1974 election.

Section 16-2406, R.C.M. 1947 is contained in a chapter entitled, **County Officers — Qualifications — General Provisions**. This section provides in part as follows:

Vacancies in all county, township and precinct offices, except that of county commissioner, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election if elective, and if not elective, the appointee serves at the pleasure of the commissioners;...

Section 16-2406, *supra*, did not enumerate a justice of the peace as a county officer until 1973 when the legislature amended that section by Section 12, Chapter 491, Laws 1973. Chapter 491, Laws 1973, which dealt exclusively with justices of the peace, created three new statutes, amended twenty-three existing statutes, and repealed three statutes pertaining to the office in Title 11, Title 16, Title 25 and Title 93, R.C.M. 1947.

Chapter 4, Title 93, 1947, which deals with justice and police courts, was extensively revised by Chapter 491, Laws 1973. Of the fourteen sections in Chapter 4, five were amended and three were created by Chapter 491, Laws 1973. One of the sections in this chapter which was left intact, however, was section 93-406, R.C.M. 1947 which reads as follows:

If a vacancy occurs in the office of a justice of the peace, the county commissioners of the county must appoint an eligible person to hold the office for the remainder of the unexpired term.

This section, of course, is in conflict with section 16-2406, *supra*, which requires appointees to any elective county office to hold office until the next

general election. Generally, legislative intent is indicated by the legislature's action rather than its failure to act, but the legislature's silence, when it has authority to speak, may sometimes give rise to an implication as to legislative purpose. **Bottomly v. Ford**, 117 Mont. 160, 157 P.2d 108 (1945). In Chapter 491, Laws 1973 the legislature revised most of the statutes pertaining to justices of the peace, but left section 93-406, *supra*, intact. By failing to amend or repeal section 93-406, *supra*, it is clear the legislature intended the provision to remain in effect. It is a common rule of statutory construction that the legislature acted with full knowledge and information as to all existing laws on the same subject. **Fletcher v. Paige**, 124 Mont. 114, 220 P.2d 484 (1950).

Section 93-406, *supra*, specifically deals with vacancies in the office of justice of the peace while section 16-2406, *supra*, deals generally with all vacancies in county offices. Where one statute deals with a subject in general and comprehensive terms, and another deals with a part of the same subject in a more minute and definite way, the latter will prevail over the former to the extent of any necessary repugnancy between them. **City of Billings v. Smith**, 158 Mont. 497, 490 P.2d 221 (1971).

In considering a related question then Attorney General John W. Bonner, relying on **State ex rel. Morgan v. Knight**, 76 Mont. 71, 245 Pac. 267 (1926), stated in **19 Opinions of the Attorney General**, No. 51 as follows:

Section 8838 [now 93-406] provides that "If a vacancy occurs in the office of Justice of the Peace, the County Commissioners of the County must appoint an eligible person to hold the office **for the remainder of the unexpired term**".

The Justice here was appointed to fill a vacancy. He could hold under such appointment only for the unexpired term.

In addition, section 93-406, *supra*, was adopted from what is now Cal. Gov. Code §71180. In interpreting similar language in §71180, *supra*, the California Supreme Court in **Caldwell v. Bruning**, 48 Cal. Rptr. 849, 410 P.2d 353 (1966) stated:

The second sentence of section 71180 of the Government Code reads: "The appointee shall hold office for the remainder of the unexpired term of his predecessor and until his successor is elected and qualifies."

Therefore, the term of office of each of the petitioners [appointees] is for the term of his predecessor, and until his successor is elected and qualified. (citing **Campbell v. Hite**, (1962) 57 Cal.2d 484, 487-488, 20 Cal. Rptr. 328, 330, 369 P.2d 944, 946.)

Although the California statute differs from the Montana provision in that it also requires the successor to be elected and qualify, the language pertaining to the appointee holding office "for the remainder of the unexpired term" is identical. Construction of statutes by courts of the state from which the statute was borrowed is entitled to respectful consideration, and only strong reasons warrant departure therefrom. **Kujich v. Lillie**, 127 Mont. 125, 260 P.2d 383 (1953).

Sections 93-7605 and 93-7607, R.C.M. 1947 are located in a chapter entitled, **Justice Court — Dockets**. These statutes deal with the delivery of the justice court docket from one justice to the next and contain language indicating that a justice of the peace vacancy should be filled by election rather than appointment. In this regard these statutes are in conflict with both sections 16-2406, **supra**, and 93-406, **supra**. These statutes pertain primarily to justice court dockets. Inasmuch as they are inconsistent with the specific statute, section 93-406, **supra**, the specific statute will control. **In Re Kesl's Estate**, 117 Mont. 327, 161 P.2d 641 (1945).

The fact that the legislature left section 93-406, **supra**, intact while extensively revising other statutes pertaining to justices of the peace indicates a legislative intent that section 93-406, **supra**, remain in force. Further, section 93-406, **supra**, being the specific statute, will have effect over sections 16-2406, 93-7605 and 93-7607, **supra**.

**THEREFORE, IT IS MY OPINION:**

An appointed justice of the peace will hold office for the remainder of the unexpired term pursuant to section 93-406, R.C.M. 1947.

Very truly yours,

**ROBERT L. WOODAHL**  
Attorney General