

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 48

COUNTY ATTORNEYS - Appointment and subsequent election;  
COUNTY OFFICERS AND EMPLOYEES - Appointment and  
subsequent election of county attorney;  
ELECTIONS - Appointment and subsequent election of  
county attorney;  
ELECTIONS - Appointment in case of tie vote;

OPINIONS OF THE ATTORNEY GENERAL

MONTANA CODE ANNOTATED - Sections 7-4-2206(2),  
7-4-2206(3), 13-16-506;  
OPINIONS OF THE ATTORNEY GENERAL - 36 Op. Att'y Gen. No.  
107 (1976).

- HELD: 1. The term of an individual appointed to fill a vacancy in the office of county attorney, due to a tie vote, extends until the next general election.
2. After an appointment to fill a vacancy in the office of county attorney, the successor chosen at the next election holds office for the remainder of the unexpired term which was originally determined to be vacant.

28 December 1987

Don Peterson, Chairman  
Board of County Commissioners  
Lake County Courthouse  
106 Fourth Avenue East  
Polson MT 59860-2185

Gentlemen:

You have asked my opinion on two questions which I have phrased as follows:

1. If there is a tie vote in an election for county attorney, and the county commissioners appoint one of the candidates who tied to fill the office, does the appointee serve until the next general election?
2. At the next general election for county attorney, is the successor elected to serve a full four-year term?

According to your opinion request, the office of county attorney was on the 1986 ballot and, due to a tie vote, the county commissioners appointed one of the candidates who tied to fill the office. Section 13-16-506, MCA, authorizes this procedure "to fill the office as in other cases of vacancy." (Emphasis added.) According to the underlined language, a tie vote is treated as a vacancy in office, to be filled by appointment.

Section 7-4-2206(2), MCA, addresses the length of term of one appointed to a vacant county office.

OPINIONS OF THE ATTORNEY GENERAL

Vacancies in all county offices, except that of county commissioner, shall be filled by appointment by the board of county commissioners. Except for the justice of the peace, the appointee shall hold his office, if elective, until the next general election unless otherwise provided in subsections (3) or (4), and if not elective, the appointee serves at the pleasure of the commissioners. [Emphasis added.]

Thus, the term of one appointed in 1986 to fill a vacancy in the office of county attorney, due to a tie vote, extends until the election of a successor at the next general election in 1988.

Your second question is answered by referring to section 7-4-2206(3), MCA. That section provides that where, as here, the vacancy occurred 75 or more days before the general election held during the second year of the term, an individual shall be elected to complete the term at that general election. More precise guidance is offered in Bailey v. Knight, 118 Mont. 594, 168 P.2d 843 (1946), in which the Montana Supreme Court concluded that after an appointment, when a successor is chosen at the next election, the term of the elected officer is the remainder of the unexpired term originally determined to be vacant. See also 36 Op. Att'y Gen. No. 107 at 556 (1976).

THEREFORE, IT IS MY OPINION:

1. The term of an individual appointed to fill a vacancy in the office of county attorney, due to a tie vote, extends until the next general election.
2. After an appointment to fill a vacancy in the office of county attorney, the successor chosen at the next election holds office for the remainder of the unexpired term which was originally determined to be vacant.

Very truly yours,

MIKE GREELY  
Attorney General