

VOLUME NO. 33

Opinion No. 18

**COUNTY TREASURERS - term of office - election to fill unexpired term; CONSTITUTIONAL LAW.**

**HELD:** A county treasurer who was elected in a general election to fill the unexpired term of the previous county treasurer is prohibited by section 5, Article XVI of the Montana Constitution, as amended, from being a candidate for such office at the next general election.

April 14, 1970

Mr. Calvin T. Christian  
Lake County Attorney  
Office of the County Attorney  
Polson, Montana 59860

Dear Mr. Christian:

In your recent letter you asked for my opinion on the following question:

May a county treasurer who was elected in a general election to fill the unexpired term of the previous county treasurer be eligible as a candidate for such office at the next general election for the succeeding term, in view of section 5, Article XVI of the Montana Constitution, as amended?

Section 5, Article XVI of the Montana Constitution, as amended, provides in part, as follows:

“There shall be elected in each county the following county officers, who shall possess the qualifications for suffrage prescribed by section 2 of Article IX of this constitution and such other qualifications as may be prescribed by law: . . . one treasurer, who shall be collector of taxes, provided, that the county treasurer shall not be eligible to his office for the succeeding term; . . .”

I have been unable to find any Montana Supreme Court cases or Attorneys' General opinions directly in point on this question. Several Attorneys' General opinions have considered the above constitutional prohibition with regard to county treasurers who were appointed to fill out an unexpired term. However, none of them specifically decide the question as to the application of the above constitutional prohibition to county treasurers who were elected to fill out an unexpired term. See opinion 247, Volume 19, **Report and Official Opinions of the Attorney General**, Honorable John W. Bonner; opinion 212, Volume 20, **Report and Official Opinions of the Attorney General**, Honorable R. V. Bottomly; and opinion 130, Volume 23, **Report and Official Opinions of the Attorney General**, Honorable Arnold H. Olsen.

In opinion 212, Volume 20, *supra*, Attorney General R. V. Bottomly stated in part as follows:

“. . . the constitutional prohibition found in Section 5, Article XVI of the Constitution, as amended, providing that a county treasurer shall not be eligible to his office for the succeeding term, applies only to county treasurers who were elected . . . to fill out an unexpired term.” (Emphasis supplied.)

The above cited opinions, although not directly in point, clearly imply that the above constitutional prohibition does apply to county treasurers who were elected to fill out an unexpired term.

In 59 A.L.R.2d, page 731, it is stated as follows: “. . . where the Constitutional provisions under which the incumbent succeeded to the office are such as to make it clear that the occupant of the office is intended to be disqualified irrespective of whether he is a full-term or only a part-term incumbent, he has been held disqualified to seek re-election.” See *Fitzpatric v. McAlister*, (1926) 121 Okla. 83, 248 Pac. 569 and *Robertson v. State Election Bd.*, (1926) 121 Okla. 99, 248 Pac. 583.

The language is clear in section 5, Article XVI of the Montana Constitution that a county treasurer is intended to be disqualified to seek re-election irrespective of whether he is a full-term or only a part-term incumbent.

THEREFORE, it is my opinion that a county treasurer, who was elected in a general election to fill the unexpired term of the previous county treasurer, is prohibited by section 5, Article XVI of the Montana Constitution, as amended, from being a candidate for such office at the next general election.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General