

OPINION
42-44

November 23, 1942 (OPINION)

COUNTY TREASURER

RE: Term of Office

I have your letter of November twenty-first, advising that the county treasurer of Pembina County has resigned, or will resign to take the office of clerk of the district court after the first of January. The newly elected county treasurer does not take office until May 1, 1943, and you inquire whether the county commissioners can appoint the newly elected county treasurer to fill the unexpired term of the present treasurer, without having the term during which he serves to complete the unexpired term of the present treasurer considered as an independent term for the newly elected treasurer, thereby making him ineligible for reelection in 1944. In other words, you inquire whether the fact that he completes the unexpired term of the present treasurer disqualifies such party from being elected for two consecutive terms under the constitutional provision limiting the county treasurer to four years in succession.

Section 173 of the North Dakota Constitution provides that county treasurers shall not hold their respective offices for more than four years in succession. Section 3259 of the 1913 Compiled Laws provides that a county treasurer shall not be eligible for election to such office for more than two successive terms of two years each.

Under the rules of legislative construction, we should construe these two provision, if possible, together, in such a way that they do not conflict. It may be well urged that Section 173 relates to the election of county officers every two years; that the statement above mentioned contemplates only two elective terms, or in other words, two full terms. The weight of authority is that serving a portion of a term for which someone else has been elected, does not disqualify such person serving such portion of a term, for another term. Surely, he could not be charged with the first term that his predecessor served, and the courts have generally held that only full terms served by the candidate in question are counted or considered. Therefore, under this construction, the newly elected treasurer could be appointed to fill the unexpired term of the present treasurer, and would be eligible for two full terms of his own. See *McGinnis v. Cossar*, 18 S.W.2d., 988; *Bozeman v. Laird*, 45 So. 722; *State v. Pontius*, 85 N.E. 540; *Black v. Pate*, 30 So. 434.

This office takes the position that Section 3259 above mentioned is a legislative interpretation of the constitutional provision limiting a treasurer to two terms. Any other holding than the above would result in limiting a man who happened to finish the unexpired term of his predecessor, to one term of his own. Surely, such an interpretation would be ridiculous.

ALVIN C. STRUTZ

Attorney General