

**OPINION**  
**49-155**

March 29, 1949 (OPINION)

OFFICERS

RE: State Senator Elected County Treasurer

This is in reply to your letter of March 25 addressed to the Attorney General.

You state that Mr. Frank Albers, who was elected State Senator in 1946 from your district which includes Oliver County and whose term does not expire until January, 1951 was elected county treasurer of Oliver County at the 1948 General Election. The question now arises whether under the provisions of Section 39 of the state Constitution Mr. Albers can qualify as county treasurer.

Section 39 of the Constitution provides:

No member of the legislative assembly shall, during the term for which he was elected, be appointed or elected to any civil office in this state, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected; nor shall any member receive any civil appointment from the governor, or governor and senate, during the term for which he shall have been elected."

Mr. Albers was a member of the legislative assembly in the 1947 session at which session the salaries of county officers, including the county treasurer, were increased. It follows, therefore, that Mr. Albers squarely comes within the inhibition of Section 39 since it specifically provides that no member of the legislative assembly shall during the term for which he was elected be appointed to any civil office in the state which shall have been created or the emoluments have been increased for the term for which he was elected. Mr. Albers qualified as State Senator in January, 1947, and his term does not expire until January, 1951.

This same question was passed upon by this office and an opinion written on January.

This same question was passed upon by this office and an opinion written on January 22, 1944, by the then Attorney General, Mr. Strutz. This opinion is found in the Attorney General's Report of 1942-1944 on page 72. We quote the following paragraph from that opinion:

You also inquire what the effect of this section would be on the candidacy of any of the members of the legislative assembly for county office. The constitutional provision in question provides that no member of the legislative assembly shall be appointed or elected 'to any civil office in this state.' That would clearly include county offices, where the emoluments of such county offices were increased by the last assembly."

In view of the facts and Section 39 of the Constitution quoted herein, it is clear that Mr. Albers cannot qualify for the office of county treasurer.

You inquire further whether or not there is any duty on the part of the county commissioners to oppose Mr. Albers qualifying as such treasurer.

As we have pointed out, Mr. Albers is disqualified under the Constitution and, therefore, legally cannot qualify as the treasurer, and it is the duty of the county commissioners to appoint his successor.

WALLACE E. WARREN

Attorney General