

Correspondence.

BEAVER, Oct. 16, 1880.

Editor Deseret News:

After mailing my letter of this date, I received your evening's issue of Thursday, 14th, and decided to while away an evening hour, more or less, in answering the "Liberal" twaddle about Mr. Fotheringham's commission as County Clerk (?). As to the quotation from the Organic Act, I think your answer quite sufficient, and will only add there is nothing in the point.

As to the wording of the statute about commissioning re-elected officers, I see nothing "peculiar" in it; it is as follows: "And all persons re-elected to any office, thereby becoming their own successors, shall, when so elected (re-elected), give bonds, qualify and be commissioned by the Governor, as in other cases required by law." Now, sir, in the first place Mr. Fotheringham was not "re-elected;" in the second place there is no statute requiring the County Clerk to be commissioned. All there is in the statute quoted is that parties who succeed themselves, who are required by law to have commissions must obtain them the same as though it was their first election, but it creates no new office of commission. I think, on a close examination of the statute, you will concur in my view. The language is clear, re-elected commissioned officers must "be commissioned by the governor as in other cases required by law." Prior to the passage of the act referred to the citizens of Beaver County had a long experience with the "liberal" pettifoggers, and do not get excited over their folly. I am not disposed to advise Mr. Fotheringham in the premises, but were the case my own I should not ask the governor to commission an office which he has no legal right to commission. County clerks, until the last August election, were appointed of the court, and not commissioned, hence the law cannot, even by implication, apply to them. This is worse than the woman madamus case, and I regret having spent so much time over it. Like the other point there is nothing in it.

DANIEL TYLER.

BEAVER, Oct. 23, 1880.

Editor Deseret News:

You will please accept my best thanks for the courteous manner in which you treated our legal difference of opinion in regard to "the peculiar wording" of the statute requiring "re-elected officers" to be commissioned. With your further argument and quotation from the legislative journal, I concede the point that as you say, the language might be construed, the intent of the Legislature to the contrary notwithstanding, to apply to all re-elected officers. But, sir, in my view this does not effect the main point in the case of county clerks, nor do I understand you legally so to hold.

The point as I understand it is, should the Governor commission county clerks? I understand the "liberals" to hold that he should, but that he should not commission Mr. Fotheringham because he is a member of the legislature and the governor is understood to favor that doctrine. In support of that view the "liberals" quote the clause in the organic act referred to, which need not be re-quoted.

That the Governor is holding the matter under advisement or declines to grant the commission for some cause is evident, as since writing I have learned that the ever prompt and obliging Secretary, Hon. A. L. Thomas, has some time since been paid for executing the commission.

Doubtless His Excellency either takes my view, that it is not an office of commission, or otherwise that Mr. Fotheringham is barred by being a member of the Legislative Council. The former is doubtless the correct view whatever the Governor's reasons are or may be.

All of the qualifications required in the Act making the office of County Clerk elective, are that he shall, within twenty days after his election, take an oath of office, and give bonds with approved security, to the acceptance of the County Court, conditioned for the faithful performance of the duties of his office, and such oath and bond shall be filed with the Probate Judge. Had the legislature intended that county clerks should be commissioned, it would undoubtedly have added that to the other requirements. But it is an office seldom, if ever commissioned.

As to the clause in the Organic Act, it is simply making the United States law relative to Senators and Representatives applicable to the Territorial Legislatures and all there is in it that they shall make no law increasing their own salaries nor shall they create any new office of profit to themselves. Making the office of county clerk elective does not create any new office nor create any additional salary, the County Court deciding upon the amount of salary paid to its clerks according of course to actual service rendered.

Had Congress, in the Organic Act, have followed the United States law a little further and have said "No person holding any office under the Territory (substituting Territory for United States), shall be a member of either branch of the legislature," then in that case the "liberals" would have a point. But fortunately and wisely no such provision was made, probably for the reason among others that new colonies as territories are supposed to be or are not usually supplied very well with men who have a desire or are competent to hold office. They are usually in the first instance the hardy yeomanry who seek how to develop homes and create a living by out-door manual labor, thus allowing those who are competent to hold more than one office besides the 40 days' sitting, which would poorly if at all support the legislator alone, much less his family.

In addition, I repeat that County Clerks are not re-elected officers, and hence the "peculiar Statute" cannot legally be construed to apply to them. Of course no one can tell how courts may hold, for as a rule, they (honestly no doubt) differ on many points among themselves, and the rulings depend much upon who sits on the bench.

This is not designed, nor do I see that it in any way conflicts with your expressed legal views, but as my hasty written letter, referred to in your Wednesday evening's editorial, seemed to require a further and more elaborate explanation, I trust you will give it space in your very valuable journal.

Yours faithfully,  
DANIEL TYLER.

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