

**County Division, Petition Relating to Boundaries Proposed
New County. Petition, Retaining Territory in Old County.
Boundaries, Proposed New County, Change Of. New County,
Boundaries Of.**

Petition filed with board of county commissioners for retention of territory in old county must show upon its face that signers are residents of the territory proposed to be retained within the old county.

The filing of a sufficient petition is a jurisdictional matter and the board has no right to make order based on void petition.

Helena, Montana, July 22, 1911.

Hon. Board of County Commissioners,
Chouteau County,
Fort Benton, Mont.

Gentlemen:

I am in receipt of your letter of the 17th inst., submitting for the consideration of this office a petition received by you asking that certain territory be allowed to remain in Chouteau county. The petition filed with you is addressed to your honorable board and is as follows:

"We the undersigned qualified voters of
in Chouteau county, Montana, do respectfully petition that
townships 29 to 37, North, inclusive, and ranges 1 to 10 E.,

inclusive, be allowed to remain in Chouteau county, which is provided for in Substitute for Senate Bill No. 35."

While the petition does not so state we understand that a petition has heretofore been filed with your board asking for the sub-division of Chouteau county, and for the establishment of the new county, and that this petition above quoted is for the purpose of changing the lines of the proposed new county so as to leave the territory named in the petition within the old county of Chouteau the question submitted being

"Is the petition filed sufficient to give the board jurisdiction to act in the matter?"

The Sixth Sub-division of Chap. 112, Laws of 1911, on page 210, in dealing with this subject provides:

"On the final hearing said board of county commissioners must, upon petition of not less than 50 per cent of the qualified electors of any territory lying within said proposed new county and contiguous to the boundary line of the * * * * * new county and of the old county, etc.,"

This petition does not conform to this law for the reason that it does not appear therein that the parties who signed it are residents of the territory which they desire to have left in the old county nor does it appear from the petition that said territory is contiguous to the boundary line of the proposed new county and of the old county. Whether it is absolutely necessary that this latter should appear in the petition is immaterial in this case but it certainly should appear in said petition that the signers are residents of the territory which they seek to have retained in the old county.

This I think is a jurisdictional matter and unless so stated in the petition the board does not have any right to consider the petition or to act thereon. You should therefore disregard this petition.

See State ex rel Arthur v. Bd. of Co. Com'rs, 44 Mont. _____.

Yours very truly,

ALBERT J. GALEN,

Attorney General.