

Candidates For New Counties Run as Independent, When Counties New, When Come Into Existence—Counties, New, Subject to Jurisdiction of Old County For Ninety Days—County Commissioners of New County Cannot Employ Counsel During Ninety Day Period.

A new county is subject to the jurisdiction of the old county until the lapse of ninety days after filing of petition with secretary of state, and therefore cannot hold primaries when such primaries come within that period.

The county commissioners of a new county have no authority to employ counsel during the ninety day period.

June 3, 1920.

Mr. John S. Nyquist,
Soobey, Montana.

Dear Sir:

I have your letter of the 26th instant, asking for my opinion regarding two questions.

First, as the new County of Daniels will not be fully created until about August 27th, which will not be until about one week after the date when the primaries are held, will this prevent the new county entering the primaries as a new county?

Section 4 of Chapter 226, Session Laws of 1919, provides that after the vote has been canvassed if it appears that 58% of the votes cast are in favor of the new county, the board of county commissioners shall by a resolution entered on its minutes declare such territory duly formed and created as a county, a copy of such resolution to be forthwith filed in the office of the Secretary of State, *and ninety days from and after the date of such filing the said new county shall be deemed to be fully created, and the organization thereof shall be deemed completed, and such officers shall be entitled to enter immediately upon the duties of their respective offices*, etc. Said section further provides for the issuance of certificates of election, and that the persons elected members of the board of county commissioners and the county clerk shall immediately upon receiving their certificates of election assume the duties of their respective offices. Said section further provides that the board of county commissioners shall have authority to provide a suitable place for the county officers and to purchase supplies necessary for the proper conduct of the county government, and that all other officers shall take office ninety days after the filing of the resolution in the office of the Secretary of State.

Clearly, under the provisions of this act, the new county does not actually come into existence until ninety days after the filing of the resolution in the office of the Secretary of State. During those ninety days the county does not legally exist, and the territory which will be embraced therein when it does come into existence, still remains a part of the old counties, and the old counties retain jurisdiction over the

portions which will be detached from them when Daniels County finally comes into existence. Therefore, no primaries can be held by Daniels County, but so far as the primaries are concerned, those parts of the old counties which will be included in the new county must be considered as parts of the old counties. In other words, the primaries will be held in the old counties just as though no action whatever had been taken for the creation of Daniels County.

Of course this will mean that at the general election in November there will be no candidates in Daniels County who have been nominated at a primary election, and that all candidates at that election will have to run as independent candidates.

With reference to the power of the board of county commissioners to employ legal counsel during the ninety days between the filing of the resolution and the time when the county becomes fully created and organized, I am of the opinion that the board of county commissioners has no such power. While the act provides that the members of the board shall immediately after receiving their certificates of election, assume the duties of their offices, yet the act specifies just what the board may do during the ninety day period, and it was evidently the intention of the legislature that the members should immediately assume the duties of their offices for the sole purpose of performing these particular duties, in order that when the ninety day period expires the county will then be in a position to proceed with the county business and affairs. I fully agree with you that it would be best to have the act also provide that the county attorney should assume the duties of his office immediately in order that he might act as the legal advisor of the board during the ninety day period, but the legislature having failed to do so no one can read any such provision into the act.

Respectfully,

S. C. FORD,

Attorney General.