

**New Counties—Obligation of New County to Pay Interest to Old County on Indebtedness Owing to the Old County.**

Upon the creation of a new county, it must pay its ratable proportion of all interest that the old county was liable for at the time the new county was formed.

John B. Muzzy, Esq.,  
County Attorney,  
Stanford, Montana.

My dear Mr. Muzzy:

You have inquired whether, upon the formation of a new county, such new county is required to pay interest on the amount of its indebtedness to the old county until such indebtedness is paid.

Section 7 of Chapter 226 of the Laws of 1919, referring to the payment of the indebtedness found to be due from the new to the old county, reads as follows:

“Provided, however, that such payment by said new county may be made in not more than three equal annual payments or by funds to be derived from the sale of bonds of said new county, as may be determined by a resolution of the Board of County Commissioners of said new county, adopted within one year after the receipt of the statement from the Board of Commissioners as aforesaid of the amount or amounts due from it.”

It is to be noted that the statute makes no specific provision in regard to interest. However, Section 3 of Article XVI of the Constitution of Montana provides that upon the establishment of a new county “it shall be held to pay its ratable proportion of all then existing liabilities of the \* \* \* counties from which it is formed.”

In *Holliday v. Sweet Grass County*, 19 Mont. 364, the legislative Act creating Sweet Grass County required that upon the determination of the indebtedness of the new county a warrant should be drawn

by the new county in payment of the same. The warrant was not drawn until a later date and did not include interest. It was held that under the foregoing constitutional provision the new county was required to pay interest from the date that the indebtedness was ascertained.

If the new county elects to pay its indebtedness in installments as provided in Section 7, supra, which indebtedness consists of the new county's share of the indebtedness of the old county, and is not required to pay interest on the same, the old county would be paying the entire interest on the indebtedness and the new county would not be bearing its proportion of the same during the time that the payments to the old county were deferred, which would be in contravention of the constitutional provision above quoted. The interest the old county had obligated itself to pay was an "existing liability" at the time of the adjustment.

The law makes no specific provision for the inclusion of accruing interest on the indebtedness of the old county by the Board of Commissioners in making the adjustment between counties. If it was in fact included, then of course no further interest would be payable; if not, the new county is obligated for its share of the same.

It is, therefore, my opinion that the "ratable proportion of all then existing liabilities" of the old county includes a ratable proportion of the interest that the old county was liable for at the time the new county was formed, and that the new county is required to pay its ratable proportion of such interest.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.