

Land Classification—Cost of—How Divided Between Counties When New County Created.

The unpaid cost of classifying land contained in part in Daniels County, under contract entered into with Valley County, should be apportioned between the counties in proportion to the assessed valuation of the respective territories involved.

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Chairman Board of County Commissioners,
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My dear Mr. Anderson:

You have inquired on what basis the unpaid part of the cost of classifying the lands taken from Valley County by Daniels County is to be divided between the two counties, the contract price for classifying having been $1\frac{7}{8}$ cents per acre, and you have referred to Chapter 201 of the Laws of 1921 as governing the matter and ask what is meant by "proportionate share" as used in that Act.

Chapter 201 of the Laws of 1921 reads as follows:

"Any new county heretofore formed or that may hereafter be formed shall be entitled to all records, maps, plats, and charts of any old county, any part of whose territory is included in such new county, which records, maps, plats, or charts relate to the classification of lands for taxation purposes and apply exclusively to territory included in such new county, and such records, maps, plats, and charts, shall be delivered by the officer or board of such old county to the corresponding officer or board of such new county upon proper receipt therefor, and shall be made and become a part of the records of such new county, to all intents and purposes the same as if such records, maps, plats, and charts had been originally prepared and made by such new county; and provided, further, that in the event territory is taken from one county and added to another county such plats and records covering such territory taken, shall be transferred to the enlarged county. Provided, that if any portion of the cost of preparing such records, maps, plats, or charts remain unpaid, said new county or enlarged county shall pay its proportionate share of such cost as may be determined by the board of commissioners of the old county."

The above chapter has no application to classification of lands, but to the cost of preparing the records, maps, plats, or charts constituting the record of the results of classifying, as distinguished from the cost of examining and fixing the class of land itself. This chapter is therefore not applicable to your question, which, as I understand it, is confined to a division of the cost of the classifying itself. In amending the Land Classification Law by Chapter 239 of the Laws of 1921, the Legislature inserted the following provision, which is the third paragraph of Section 4 of said chapter:

“Whenever at any time before the completion of any contract for classification under the terms of this Act, or of Chapter 89 of the Laws of the Sixteenth Legislative Assembly of the State of Montana, a new county is formed, containing any portion of the county included in said contract, such new county shall assume the uncompleted portion of said contract, so far as it applies to the territory within said new county, and such portion of said contract shall be an obligation of said new county in the same manner as if said contract had been originally entered into by said county; and whenever, before the completion of any contract as above described, a portion of one county is taken from said county and added to another county, such county to which said territory is added shall assume the uncompleted portion of said contract so far as it applies to the territory transferred and such portion of said contract shall be an obligation of said enlarged county in the same manner as if said contract had been originally entered into by said county to which such territory is transferred.”

Chapter 4 of the Laws of 1921 contains the following provision: “No law contained in any of the codes or other statutes of Montana is retroactive, unless expressly so declared.” Chapter 239 contains no express declaration that it is retroactive, and therefore does not apply to the settlement in question, Daniels County having been formed prior to 1921.

The contract for classification, if in existence at the formation of the new county, was one of the obligations of the old county, and should have been included in the settlement between the counties in the same manner as other obligations, under Section 7, Chapter 226, of the Laws of 1919, and Article XVI, Section 3, of the Constitution of Montana, which latter section reads as follows:

“In all cases of the establishment of a new county it shall be held to pay its ratable proportion of all then existing liabilities of the county or counties from which it is formed, less the ratable proportion of the value of the county buildings and property of the county or counties from which it is formed; provided, that nothing in this section shall prevent the re-adjustment of county lines between existing counties.” See *Holliday v. Sweet Grass County*, 19 Mont. 364.

If any portion of the liability for cost of classification that existed at the formation of the new county was for any reason omitted from the settlement between the counties, and from your statement this seems to be the situation presented, such portion should be divided upon the same basis as any other obligation of the old county.

It is, therefore, my opinion that the unpaid cost of classifying the land contained in part in Daniels County, under a contract entered into with Valley County, should be apportioned between the counties upon the basis provided in Section 7 of Chapter 226 of the Laws of 1919, for the division of indebtedness upon the formation of a new county, which is in proportion to the assessed valuation of the respective territories involved.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.