

Board of County Commissioners—Apportionment of Indebtedness Between Counties—Adoption or Rejection of Report in Whole or in Part by the Board of County Commissioners—Conclusiveness of the Report of the Board of Commissioners Appointed by the Governor.

There is no discretion vested in the Board of County Commissioners of Sheridan and Daniels Counties relative to adopting or rejecting the report of the Board of Commissioners appointed by the Governor to apportion the indebtedness between the two counties, either in whole or in part.

The report of the Board of Commissioners appointed by the Governor is final, if arrived at according to law, and cannot be changed by agreement between the counties.

If either county is dissatisfied with the result, mandamus is the remedy to compel the Board to reassemble and make the apportionment as required by Chapter 226 of the Laws of 1919.

R. G. Tyler, Esq.,
Chairman Board of County Commissioners,
Plentywood, Montana.

My dear Mr. Tyler:

You have requested from this Department an opinion on the following question.

“Can the Board of Commissioners of Sheridan County adopt the report of the Commissioners appointed to apportion the indebtedness between the counties of Sheridan, Valley and Daniels in so far as there is no dispute, leaving the matters in controversy for future settlement, or must the report be adopted in full or else rejected?”

The proceedings for apportioning indebtedness between old and new counties are fixed by Sections 6 and 7 of Chapter 226 of the Sixteenth Session Laws.

It is my understanding of the law that there is nothing for the Board of County Commissioners of either the old or new county to approve or disapprove as regards the findings of the Board of Commissioners appointed by the Governor to apportion the indebtedness between such counties.

The law creates this Board and specifically prescribes what it shall do, the manner in which it shall function, and what it shall consider in arriving at its findings. It has no discretion in the matter, but must make its apportionment as the law prescribes.

When it has done this, it certifies to the respective Boards of County Commissioners the amounts payable from the new to the old county, and the value of any property belonging to the old

county at the time when the division took place which is situated in the new county. The sum of these "shall be an indebtedness from the new county to the old county."

The law further provides:

"The proceedings in this section required to be taken in the ascertainment and adjustment of property rights and debts shall be had and taken as between said new county and each of the counties from which territory is taken to form said new county, in the manner and at the ratio in said section provided."

In the case of *State ex rel. Furnish v. Mullendore*, 53 Mont. 109, where the Commissioners appointed to apportion indebtedness were charged with not complying with the law, it was held that:

"Mandamus is the proper remedy to compel commissioners appointed to adjust county indebtedness between an old and new county to reassemble and correctly apportion such indebtedness; the fact of their adjournment being immaterial."

See, also, *State ex rel. Foster v. Ritch et al.*, 49 Mont. 155.

It is, therefore, my opinion that there is no discretion with the Boards of County Commissioners of Sheridan and Daniels Counties relative to adopting or rejecting the report of the Board of Commissioners appointed by the Governor to apportion the indebtedness between the two counties, either in whole or in part. The report of such Board is final, if arrived at according to the law, and cannot be changed by agreement between the counties. If either county involved is dissatisfied with the result, the only remedy is by mandamus to compel the said Board to reassemble and make the apportionment as required by Section 7, Chapter 226, *supra*.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.