

**County Seat, Petition for Removal Of. Petition for Removal of County Seat, What to Contain. Board of County Commissioners, Action of With Reference to Removal of County Seat.**

Under the provisions of Section 2852, Revised Codes of 1907, before the board of county commissioners can consider and act on a petition for removal of a county seat, and as a condition precedent to the exercise of jurisdiction by it and the submission of the question to the electors; such board must find from a comparison of the names subscribed to the petition with the names on the poll books of the county and the last assessment roll, that the petition is subscribed by a majority of the legal voters of the county who are ad valorem taxpayers thereof. If such petition is not found to be signed by a majority of the legal voters of the county who are such taxpayers, it is insufficient.

Sept. 7th, 1910.

Julian A. Knight, Esq.,  
County Attorney,  
Virginia City, Montana.

Dear Sir:—

I acknowledge receipt of your favor of the 3rd inst., wherein you ask the opinion of my office with reference to the construction of Sec. 2852 of the Revised Codes of 1907, relative to the sufficiency of a position for a change of county seat.

You ask particularly as to whether, under the provisions of said section the petition required must contain the names of a majority of the voters whose names appear upon the poll books of the last preceding election held within the county; and whether the names of each voter signing the petition must appear upon the assessment roll of the county as an ad valorem taxpayer before such petition can be considered by the board of county commissioners. In this connection you call attention to the provisions of Section 2151, wherein the words "inhabitants of any county of this state" are used.

I have made careful study of the sections by you referred to, and give you as my opinion that "inhabitants" as used in Sec. 2851 refers to all persons residing in the county without reference to whether they are taxpayers or electors; but Sec. 2852 deals particularly with the character of petition necessary to be presented to the board of county commissioners, and the jurisdictional requirements thereof. And construing these two sections together I am of opinion that the following is the proper interpretation thereof, to-wit:

Whenever the inhabitants of any county of this state desire to remove the county seat from the place where it is fixed by law or otherwise, to another place, they may present a petition to the board of county commissioners of their county, praying for such removal, and such petition shall contain the name of the place to which the removal is desired,

and ask that an election be held to determine whether or not the removal shall be made. Before such petition can be by the board of county commissioners considered and acted upon, and as a condition precedent to the exercise of jurisdiction by it, and submission of the question of removal of the county seat to the electors, the board of county commissioners must, from a comparison of the names subscribed to the petition with the names on the poll books of the county and the last assessment roll, find that such petition is signed by a majority of the legal voters of the county who are ad valorem taxpayers thereof. If such petition is not found to be signed by a majority of the legal voters of the county who are ad valorem taxpayers thereof, it shall be deemed insufficient, and the question of removal of the county seat shall not be by the board of county commissioners submitted at the next general election.

It is true that in Sec. 2852 of the Revised Codes of 1907, the clearest language was not used by the legislature, and yet, towards the end of the section the legislative intent is made quite apparent. If my construction of this statute be correct, the statute seems perfectly reasonable, for it is the taxpayers who must bear the burden of the expense of the removal of the county seat, and they are the persons most vitally interested. Apparently, for fear of mistake of legislative intent, it is made clear that even as to taxpayers, they shall not be considered competent as signers to such a petition unless their names appear upon the poll books of the last preceding election.

It is the general rule of law that statutes are to be by the courts upheld and given effect, rather than nullified, where possible. I have examined some authorities on this subject and do not find any construing enactment using language like our own.

Yours very truly,

ALBERT J. GALEN,

Attorney General