

**Records, New County. New County, Records Of. Records of New County, Time of Transcribing. Records, Date to Be Filed in New County. Transcript, Upon Organization of New County to Contain What.**

Upon the creation of a new county the records of the old county will show the condition of the property on the date of the creation of the new county.

Instruments dated prior to the creation of the new county but filed for record subsequent thereto would be filed for record in the new county.

Instruments dated after the creation of the new county should not be filed in the old county.

March 7th, 1911.

Hon. Chas. A. Taylor,  
County Attorney,  
Billings, Montana.

Dear Sir:

I am in receipt of your letter of the 1st inst., an answer has been delayed owing to the stress of business in the office incident to the session of the legislature.

You submit certain questions for an opinion, which questions have arisen incident to the creation of the new county of Musselshell, the questions being as follows:

- 1.—Will the transcribing and indexing of the property lying within the limits of the new county show the condition of

property on March 1st, or its condition at the time of the transcribing is completed?

2.—Should instruments dated prior to March 1st and filed for record after March 1st, but before the transcript is taken be recorded in Yellowstone county?

3.—Should instruments dated after March 1st, but before the transcript is taken from our records, be recorded here?

Substitute for senate bill, No. 4, passed by the twelfth legislative assembly and approved by the governor creates the county of Musselshell, said bill to take effect on March 1st. Immediately upon the taking effect of said law, it is apparent that the county of Musselshell came into existence, and the provisions of Section 4650 and 4651 of the Revised Codes of 1907, relative to the recording of instruments would apply. Section 4650 provides:

"Instruments entitled to be recorded must be recorded by the county clerk of the county in which the real property affected thereby is situated."

Section 4655 provides:

"An instrument is deemed to be recorded, when, being duly acknowledged or proved, and certified, it is deposited in the county clerk's office with the proper officer for record."

The office of county clerk of Musselshell county, having come into existence on March 1st, 1911, and the county clerk having qualified as such, it necessarily follows that instruments affecting real estate located within the boundaries of the county of Musselshell must be deposited with and recorded by the county clerk of the county of Musselshell.

Having answered your first question as above it necessarily follows in answer to your second and third questions, that irrespective of the date of the instruments if filed upon or subsequent to March 1st, 1911, the same should be recorded within Musselshell county, irrespective of the date the transcribing of the records is completed, for the records as transcribed will simply show the condition of the property within the county of Musselshell prior to the taking effect of the bill creating the county.

Yours very truly,

ALBERT J. GALEN,

Attorney General.