

House Bill No. 12, Compared With Substitute for Senate Bill No. 35. County Seats, Establishment Of.

The provisions of House Bill No. 12 relative to the establishment of permanent county seats are not in any manner in conflict with the provisions of substitute for Senate Bill, No. 35, relative to the establishment of new counties. The provisions of substitute for Senate Bill, No. 35, do not and could not deprive the legislature of its authority under the constitution to create new counties by legislative enactment.

March 9th, 1911.

Hon. Edwin L. Norris,  
Governor,  
Helena, Montana.

Dear Sir:

I acknowledge receipt of your communication of the 6th inst. submitting to my department for an opinion, the following:

"Whether or not the provisions of house bill No. 12 relative to the establishment of permanent county seats, are in conflict with the provisions of substitute for senate bill No. 35 recently approved by me relative to the establishment of new counties."

I have carefully examined the provisions of substitute for senate bill No. 35, and from such examination I find that it is practically a verbatim enactment of Chapter 227, laws of 37th session (1907) legislature of California. The California statute, however, is in direct compliance with the California constitution, which provides, in Art. XI, Sec. 3, thereof, that the legislature may by general and uniform laws provide for the formation of new counties. The constitution of Montana, however, in Sec. 1 of Art. XVI, provides that the counties of the territory as they existed at the time of the admission of the state into the Union, were declared to be the counties of the state until otherwise established or changed by law. Without expressing any opinion as to the constitutionality of Substitute for Senate Bill No. 35, it is my opinion that the provisions of that bill do not make an exclusive method of creating new counties. The first section of the bill providing "new counties may from time to time be formed and created, etc."

The supreme court of Montana in the case of Sackett v. Thomas, 25th, Montana, 240, held that the constitution recognized the power of the legislature to create new counties.

The supreme court of California upon several occasions has held that the creation of new counties is a legislative function for the reason that counties are legal subdivisions of the state for governmental purposes, and, as was said in the case of Los Angeles county v. Orange county, 32 Pac., 316:

"The legislature, except as restrained by constitutional limitations may change their boundaries and extend or consolidate two or more into one, or divide and create new counties."

Apparently House Bill No. 12 is drawn to cover the location of county seats in new counties created by a special act of the legislature, and in order to avoid the prohibition contained in Section 26 of Art. V. of the constitution, providing:

"The legislative assembly shall not pass local or special laws \* \* \* \* locating or changing county seats \* \* \* \*"

It is my opinion, therefore, that the provisions of house bill No. 12 are not in conflict with the provisions of substitute for senate bill No. 35.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.