

**Musselshell County, Apportionment of Indebtedness Of. Yellowstone County, Apportionment of Indebtedness Of. Indebtedness, How Apportioned Between Musselshell and Yellowstone Counties. Bridges, Bonded Indebtedness of Included in Apportionment.**

As a general principle of law public bridges are a part of the public highway and would not be considered in adjusting indebtedness of the county; but under the wording of the act creating Musselshell county the legislature intended to include the existing bonded indebtedness incurred for the purpose of erecting public bridges the same as any other indebtedness, and this indebtedness should be considered in the apportionment.

March 28, 1911.

Mr. Desmond J. O'Neill,  
County Attorney,  
Musselshell County, Montana.

Dear Sir:

Your letter of March 22nd has been received concerning the apportionment of the indebtedness between Yellowstone and Musselshell counties, and requesting my official opinion upon the following questions with reference to the adjusting of such indebtedness under the provisions of the act creating Musselshell county:

1. Should the value of bridges for which the county has been bonded be considered in the settlement between the two counties?

2. Should the commissioners of the old county be bound by the valuation placed upon county property under the requirements of Section 2953 of the Codes of 1907 made and approved by the clerk and the county commissioners each year?

In answer to your first question I will say that Section 6 of substitute for Senate Bill No. 4, being the act creating Musselshell county, provides as follows:

Section 6. That all the indebtedness of Yellowstone county as the same shall exist on the first day of January, 1911, shall be apportioned between the county of Yellowstone and the county of Musselshell by first deducting from said indebtedness

the amount of all moneys on hand and the amount of all moneys belonging to the said Yellowstone county, and also deducting the value of all real and personal property within or belonging to the said Yellowstone county, on the said first day of January, 1911, and the remainder of said indebtedness shall be apportioned between the respective counties in proportion to the amount of taxable property to be ascertained, and said apportionment and valuation of county property to be made by a commission consisting of the boards of county commissioners of Yellowstone county and Musselshell county and the judge of the Thirteenth Judicial district of the state of Montana, which said commission shall meet at the court house in the city of Billings on the fourth Monday of March, 1911, and shall take as a standard for said apportionment of indebtedness the assessment for the year 1910 as determined by the board of equalization of said Yellowstone county.

As a general principle of law public bridges are a part of the public highway of the county and would not be considered as a part of the real or personal property of the county in adjusting the indebtedness of the county any more than any other portion of the public highway; but under the wording of Section 6, above quoted, providing that all indebtedness of Yellowstone county, as the same shall exist on the first day of January, 1911, shall be apportioned between the two counties, the legislative assembly must have intended to include an existing bonded indebtedness incurred for the purpose of erecting public bridges the same as any other indebtedness of the county, and this indebtedness should, therefore, be considered in the apportionment. If such bonded indebtedness is included in arriving at the proper adjustment of liabilities, the value of the bridge for which the indebtedness was incurred should likewise be considered as an asset to be deducted from such indebtedness, the same as real or personal property of the county.

In response to your second question I will say that Section 6 of the act creating Musselshell county, above quoted, provides that the commission shall take as a standard for the apportionment of the indebtedness, the assessment for the year 1910, as determined by the board of equalization of Yellowstone county.

The legislative assembly had the power to prescribe, and did prescribe by that section, the manner in which the indebtedness should be apportioned and the commission should determine the valuation of the taxable property and make the apportionment of the indebtedness, as prescribed by the legislative assembly, and take as its standard the assessment for the year 1910, as determined by the board of equalization of Yellowstone county.

Custer County v. Yellowstone County, 6 Mont. 39.

Shoshone County v. Thompson, 81 Pac. 73.

Yours very truly,

ALBERT J. GALEN,

Attorney General.