

County Commissioners, Duties Of. New Counties, Petitions For. Chapter 112, Laws of 1911, Construed. Petition, Withdrawal of Names From. Registered Electors, Who Are.

Persons who have signed a petition for the calling of a special election to vote for the creation of a new county may withdraw their names from such petition if their action in so doing is timely and taken before final action by the county commissioners.

In determining whether or not the petition has the required number of signers it must contain a majority of the names on the registration list, as used at the last general election, and the commissioners have no authority to remove from such petition or registration list the names of electors who may have died or left the state or county.

The commissioners may set the dates for the election under said petition at any time within the limits prescribed by the act, and two elections may be held upon the same date.

June 24, 1911.

Hon. O. G. Skylstead,
County Commissioner,
Havre, Montana.

Dear Sir:

I am in receipt of your letter June 21st, wherein you request my official opinion upon the following questions:

1. "Can persons who have signed the petition required under the law for calling a special election to vote on the creation of a new county, petition the county commissioners to have their names removed from such petition after it has been filed, there being no show of fraud or misrepresentation in securing the signature?"

2. "In determining whether or not the petition has the required number of signers, must there be a majority of the names on the registration list as used at the last general election, or is it possible not to take into consideration the names of persons who can be shown to be either dead or to have left the state or county, or in any way, not at present qualified electors of the proposed new county?"

5. "Two separate petitions having been filed for the creation of two new counties out of the same old county, the two petitions not conflicting as to territory or otherwise, and having been acted upon separately, is there any reason why the election in the two proposed new counties cannot be held on the same day?"

In answer to your first question, it is my opinion that any signer may withdraw his name by timely action, and at any time prior to the action of the board of county commissioners in passing upon the sufficiency of the petition. This view is confirmed by the opinion of the supreme court of Montana in case of State v. Board of Commissioners, 42 Mont. 62 111 Pac. at page 150.

In answer to your second question, I would call your attention to the provisions of Section 2, of Chapter 112, Session Laws of 1911, being on page 206, which is as follows:

"Such petition shall be signed by at least one-half of the qualified electors of the proposed new county, whose names appear on the official registration books used at the general election held therein last preceding the presentation of said petition, etc."

and also on page 207, where the following provision is found

"There shall be attached to and filed with said petition, the affidavit of three qualified electors and taxpayers * * * * that the signatures affixed thereto are genuine, and that each of such persons so signing, was a qualified elector of such county therein sought to be divided at the date of such signing.

Such petition or petitions so verified * * * * shall be accepted in all proceedings provided for in this act, as prima

facie evidence of the truth of the matters and facts therein set forth."

and further on page 209, the following provision is found:

"2. Whether the said petition contains the genuine signatures of at least one-half of the qualified electors of the proposed new county as herein required."

From a reading of these various provisions, it seems that the intention of the legislature is to require the petition to be signed by electors whose names appear upon the official registration books used at the last preceding general election, that the qualifications as in said act required, apply as of the date of the signing of the petition, and not as of the date of the final action thereon by the board of county commissioners, and that the only affidavits of proof that the board of commissioners would be entitled to consider or hear at the time of their action upon the petition, is proof tending to show that such signer was not a qualified elector of the county at the date he signed said petition, or that his name did not appear upon the official registration books used at the preceding general election. In view then, of the foregoing statements, it is my opinion that the commissioners in determining whether or not the petition has the required number of signers, must ascertain whether or not such petition is signed by at least one-half (not a majority) of the electors of the proposed new county whose names appear on the registration list, etc., and that the board must take into consideration any names meeting this requirement irrespective of whether at the date of the action by the board of commissioners, such person may have removed from the county or may have ceased to become an elector thereof. See *State v. Ravalli County*, 21 Mont. 469; *State v. Martin*, 103 Pac. 840 (Nev.).

In answer to your third question, I can see no reason why the dates for the election in the proposed new counties, could not be held upon the same day, but in fixing the date of election, the commissioners must bear in mind the provisions of said act found on page 208 as follows:

"The board shall fix a date to hear and approve of said petitions, or of any opponents thereto, which date must not be more than 30 days subsequent to the filing of such petition with the clerk of said board."

Also the provision at page 211 of said act which is as follows:

"Within two weeks after its determination of the truth of the allegations of said petition as aforesaid, the board of county commissioners shall order * * * an election to be held on a specific date * * * not less than 90 nor more than 120 days thereafter, etc."

so that if in fixing the date of election upon the respective petitions, the board complies with the provisions above quoted, and in such compliance it is possible to fix the same date for each of such elec-

tions, I can see no reason why the board would not be entitled so to do.
State ex rel Bogy v. Bd. of Co. Com'rs, 43 Mont. 533.

Yours very truly,

ALBERT J. GALEN,

Attorney General.