

County Commissioners, Powers as to Registry List. Registration List; Cancellation of Names From. New Counties, Petitions For.

The board of county commissioners in considering a petition for the establishment of a new county has no power to cancel from the registration list the name of any elector who has either died or permanently removed from the county. The only person authorized by law to cancel names from the registration list is the Registry Agent.

June 29th, 1911.

The Honorable Board of County Commissioners of
Chouteau County,
Fort Benton, Montana.

Gentlemen:

I acknowledge receipt of your request of date June 27th for my official opinion as to the authority of the board of county commissioners, acting under the provisions of Chapter 112 of the laws of 1911, known as the Act for the creation of New Counties, wherein you state:

"Has the board of county commissioners, in considering a petition for the establishment of a new county, the right to cancel from the registration list the names of any electors

whom the board is satisfied have died or permanently removed from the county."

The substance of your enquiry is, whether the board of county commissioners, in considering such petition, is bound by the registration books as used at the preceding general election.

Section 2 of said Chapter 112, upon page 206 of said laws, provides:

"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, etc."

It is apparent that the only class of electors authorized to sign the petition contemplated by said section are those electors whose names appear on said official registration books, and that the registration list of the preceding general election is the basis upon which any petition for the submission to the electors of the creation of a new county must be founded. It may be true that some of the electors whose names appear upon the registration books may have died or may have permanently removed from the district, but it is also true that there must necessarily be within the boundaries of the proposed new county electors who would be entitled to register and vote, should the opportunity to do so be afforded them.

The latter portion of Section 476 of the Revised Codes of 1907 provides the only method by which the name of any registered person may be removed from the registration list; that portion of said section referred to being as follows:

"If at any time it shall be made to appear by the affidavits of two credible and responsible electors of the district that any registered person has died or permanently removed from the district, the registry agent shall place such affidavit on file and shall cancel the entry, etc."

By this provision, the only person authorized to cancel such registration is the registry agent. In any event the board of county commissioners has no authority to cancel any name upon the registration list, and must take such list as it finds the same, and determine the sufficiency of any petition presented, by comparison with such official registration book.

State ex rel Bogy v. Bd. of Co. Com'rs, 43 Mont. 533.

Yours very truly,

ALBERT J. GALEN,

Attorney General.