

**New Counties, Petition For. Petition for New Counties.  
Withdrawal Petitions, on Creation of New County.**

Petitions for the creation of a new county under the provisions of Chap. 112, Laws of 1911, must contain the names of 50 per cent of the electors whose names appear upon the registration book used at the last preceding general election exclusive of those who have permanently removed or died.

An elector desiring to have his name withdrawn from a petition for a new county must do so before said petition is considered by the board of county commissioners.

A counter or withdrawal petition must be signed by 50 per cent of the electors without reference to the prior registration list.

July 13, 1912.

Hon. Sharpless Walker,  
County Attorney,  
Miles City, Montana.

I acknowledge receipt of your letter of the 11th inst., in which you ask my official opinion on the following questions:

1. Must petitioners have upon their petitions 50 per cent of the qualified electors of the proposed new county whose names appear upon the official registration books used in the last preceding general election or need they have only 50 per cent of those remaining exclusive of any who have since permanently removed or who have died?

2. When the elector signs a petition for the creation of a new county and then signs a petition of objection asking that the district in which he lives be excluded from the proposed new county and that his name be stricken from the original petition and then signs a statement that he wants his name withdrawn from the objectors petition and added to the original petition, can his name be so counted according to his last expressed wishes?

3. In as much as the statute requires that those who signed the first petition be qualified electors whose names appear on the registration books of the last preceding general election, should the same qualifications apply as to those who signed the objectors' petition?

The first question propounded is the identical question that was

involved in the case of State ex rel Bogy vs. board of county commissioners, of Chouteau county, reported in 43 Mont. 533.

In that case the important question involved the test for the original petition for the creation of a county and the supreme court decided that upon considering the petition the county commissioners should not consider electors whose name appeared upon the registration list of the last preceding general election who had died or permanently removed from the county and that if the petition contained the names of 50 per cent of that list less those that had died or permanently removed from the county it was sufficient and I concur in the opinion you gave the county commissioners of your county to the effect that those who have died or permanently removed should be excluded.

With reference to your second question much depends upon the time the petitioners sought to have their name withdrawn from either the original petition or the counter petition. It is my opinion that the name of any petitioner on either petition could be withdrawn from either petition at any time before such petition is acted upon by the board of county commissioners, so that if the electors who had signed the original petition and then signed the counter or withdrawal petition should withdraw their names from the withdrawal or counter petition prior to the time the same was considered by the board of county commissioners, then their name would remain upon the original petition. I take it from your question that the petition was being acted upon at the time withdrawal was sought, I therefore concur in your opinion to the county commissioners to the effect that these electors should not be considered having signed conflicting petitions. A similar question is involved in the case of State vs. Bd. of County Commissioners, 42 Mont. 62, where in considering a petition for change of county seat the court held that the petition was to be acted upon by the board as presented and that no signer could make withdrawal of his name after the board had passed upon the sufficiency of the petition.

Your third question relates to the sufficiency of the withdrawal or counter petition. In presenting the case of State ex rel Arthurs vs. the Board of County Commissioners of Chouteau County (44 Mont. 51) to the Supreme Court, this department took the position that the counter petition should have the same formality and be drawn with the same care as to details as the original petition to which it was counter. In other words, that the counter petition should be measured by the same standard as the original. However, the court did not take this view of the matter and in discussing the proposition they said:

"This statute does not require that such withdrawal petition assume any particular form, neither does it in terms demand that it contain any particular matter save the prayer for the relief sought. It is clearly implied that it contain a description of the territory sought to be withdrawn but beyond this it does not go. That the other facts may be made to appear by evidence is clearly indicated."

And as to the number of signatures it is my opinion that the

counter petition is not to be tested by the preceding registration list. The provisions of the Act with reference to the counter petition does not refer to the "registration list" in any manner, neither does it state nor infer that it shall be signed in the same manner as the original petition. As to the original petition we may adopt the language of the supreme court in the Bogy case.

"It is clear from the language employed that the signers of such a petition shall at the time of signing possess two qualifications, viz: they must be qualified electors of the proposed new county and their names must be found upon the registration books."

State ex rel Bogy, vs. Board, 43 Mont. 538.

The provisions referred to by the court in the use of the above language is as follows:

"Such petitions 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, etc."

Laws of 1911, page 206.

But in the latter portion of Sec. 2, on page 210 with reference to withdrawal on counter petition the words "Whose names appear on the official registration books, etc." do not appear and was left with the bare provision that such withdrawal petition shall bear the signatures "of not less than 50 per cent of the qualified electors of any territory, etc." It is my opinion that this provision cannot mean any more nor less than it says and the conclusion is to my mind irresistible that the legislature did not mean that those signing a withdrawal petition should have been listed at the last preceding general election but that it meant what it said, that in the event 50 per cent of the then electors of the territory objected to the inclusion of the territory within which they reside, they were to be given an opportunity to express their objection in the manner therein provided. From a reading of the Act it would seem that should this provision apply only to those electors whose names appear upon the registration list used at the last preceding general election that those who are now qualified electors of the district would never be given an opportunity of expressing their desires with reference to the creation of a new county. With reference to the original petition the signers may be properly limited to those whose names appear upon the preceding registration list, for the reason that all electors in the event of the allowance of the petition are subsequently afforded an opportunity to express their wishes, viz: at the election for the creation of the county, but in the case of the withdrawal or counter petition should the signers be limited to those registered at the preceding election, no opportunity would be afforded the qualified electors of the territory to express their desire, for the Act provides that if the petition is sufficient the commissioners then and there exclude the territory described in the withdrawal petition from the proposed county and it is not thereafter submitted to the electors for their decision.

I am therefore of the opinion that the withdrawal petition should

contain the names of 50 per cent of the electors of the district sought to be withdrawn and I concur in the opinion you rendered the county commissioners of your county with reference thereto.

Yours very truly,

ALBERT J. GALEN,

Attorney General.