

Justices of the Peace, Jurisdiction Of Over New Territory in New County of Musselshell. Preliminary Hearing, by Justice of the Peace in Territory Included Within the New County of Musselshell. Musselshell County, Transcribing Records Of. Records of Counties, How Transcribed.

Until the county of Musselshell is actually organized by the appointment and the qualification of officers, the territory remains subject to the jurisdiction of the old county and a justice of the peace of the old county has jurisdiction to hold preliminary hearings until the new county is organized.

Section 11 of the Act creating Musselshell county provides that the county commissioners are required to contract for transcribing the records of property lying within the limits of Musselshell county, and, under the wording of this section, the county commissioners cannot have the records photographed instead of transcribed.

February 27, 1911.

Mr. Desmond J. O'Neil,
County Attorney,
Roundup, Montana.

Dear Sir:

Your letter of February 23rd, 1911, has been received, requesting my opinion upon the following questions, to-wit:

1. On the 20th of February, a justice of the peace at Roundup postponed a preliminary hearing until March 2nd; has the justice of the peace jurisdiction to hold this preliminary hearing owing to the creation of Musselshell county?

2. Has the County of Musselshell the power to contract for the transcribing of the records by the photograph method?

In reply, to your first question, I will say, that the act creating Musselshell county was passed by the legislature and approved February 11th, 1911. The act provides it shall take effect from and after March 1st, 1911. The act also names certain officers to hold office until the next general election, or until their successors are duly elected and qualified upon taking the oath and filing the bond provided by law; and further provides that the county commissioners of Musselshell county are empowered to subdivide the county into municipal townships and to appoint two justices of the peace for each township and to hold office until their successors are elected and qualified.

Section 7075., Revised Codes, provides that in case of the creation of a new county, any justice into whose hands a docket of a justice formerly acting as such within the same territory may come, is, for the purpose of this act considered the successor of such former justice.

Until the new county is actually organized, the territory remains subject to the jurisdiction of the courts of the old county. To constitute a new county something more is required than to define its boundaries; a local government must be provided, and the creation of a county is not accomplished until such local government is established.

People vs. McGuire, 32 Calif. 140;

Buckinghouse vs. Gregg, 19 Ind. 401;

O'Shea vs. Twohie, 9 Texas 336;

Clark vs. Goss, 12 Texas 397.

It is my opinion that the justice of the peace before whom the preliminary hearing is pending would have jurisdiction to hear the same at anytime prior to the appointment of a justice of the peace for the territory embraced within the township at present included within the township over which the present justice has jurisdiction.

In answer to your second question, I will say, that Section 11, of the act creating Musselshell county provides:

"Section 11. That the county commissioners of the said Musselshell county are hereby empowered, and it shall be their duty, to contract with the lowest responsible bidder, for transcribing and indexing all records of property lying and being within the limits of the county of Musselshell, and all other public records, which transcripts, when compiled, shall be compared with the original records by the respective clerks of the respective counties of Fergus, Meagher and Yellowstone counties, and when correct shall be by them so certified under their official seals, and thereafter the records so transcribed and certified to, shall be received and admitted in evidence in all courts of law in the state, and be in all respects entitled to like faith and credit as said original records."

You will notice that the section quoted uses the word, "transcribing" the records. This word is defined by the Standard Dictionary as meaning, "to write over again; copy or re-copy; specifically, to reduce to ordinary chirography." It is also defined by Webster: "to write over again; to copy." It appears to me that the word transcribe has a well defined meaning, as has also the word "photograph" and I do not believe that under the bill creating the county and under Section 2861, of the Revised Codes, providing for transcribing the records for a new county, that the county commissioners of Musselshell county would have authority to have the records photographed in place of transcribed.

Yours very truly,

ALBERT J. GALEN,

Attorney General.