

New Counties, Changing of Boundaries of. Boundaries of New County. Change of Territory in New County. Boundaries of.

If the proposed change in the boundaries of the new county would be such as to leave a portion of the old county projected into the new county by a narrow strip of territory in such manner as to cause confusion in regard to the boundary lines or jurisdiction, such change would be unreasonable and not within the meaning and intent of the legislature.

June 20th, 1913.

Hon. Stewart M. Conochie,
Assistant County Attorney,
Lewistown, Montana.

Dear Sir:

I beg to acknowledge receipt of yours of the 12th instant, in which you ask for an interpretation by me of a portion of Sec. 2 of Chap. 133 of the Session Laws of the Thirteenth Legislative Assembly, which refers to the changing of the proposed boundaries of new counties when petitions are filed to exclude certain territory from the proposed new county.

On account of the generality of the terms used in the act, and the different situations which might arise when it is put into practice, we must look to the general ideas underlying county governments and the general intent of the legislature in enacting this law. The whole purpose of county government is to bring to the people of the various portions of the state the benefits and efficiency to be had by local self-government, having in mind the expediency by which law may be administered, as well as the other benefits.

These considerations must be viewed in the light of different situations as they may arise. For instance, a portion of the territory to be included within a proposed new county might be so situated that access to the seat of the new county government would be extremely difficult. For example, it might consist of a valley surrounded by high mountain ranges, which would be practically impassable during the winter months, and it might at the same time be accessible by means of a narrow pass to the seat of the old county government. Such a situation would present the difficulty of cutting up the new county into odd and inconvenient shapes, and perhaps leaving narrow strips which would give no end of trouble in the matter of determining jurisdiction. On account of these various considerations we must be largely guided by what is reasonable in the circumstances of the particular cases.

Coming to an examination of the law itself, we find that it uses the expression "contiguous to the boundary line of the said proposed new county and of the old county from which such territory is proposed to be taken," also "and provided, further, that no change shall be made which shall leave the territory so excluded separate and apart and without the county of which it was formerly a part." The word "contiguous" is variously defined, and unfortunately may have several meanings.

"Contiguous means touching along a considerable line."—Century Dictionary.

"An uninterrupted connection."—Standard Dictionary.

"Touching or joining at the edge or boundary."—Standard Dictionary.

It has also been defined as meaning near to or adjacent to. The Supreme Court of Arkansas in the case of *Vestel v. City of Little Rock*, 11 L. R. A. 779, used the following language:

"By contiguous lands we understand such as are not separated from the corporation by outside land; and we think the statute permits the annexation of any such lands, and that the court is justified in making an order to annex them, whenever they are so situated with reference to the corporation that it may reasonably be expected that after annexation they will unite with the annexing corporation in making up a homogeneous city, which will afford to its several parts the ordinary benefits of local self-government. But however near they may be to the petitioning corporation, if they are so circumstanced with reference to it that it could not reasonably be expected that the parts would amalgamate and

organize a municipal unit which would afford to each the ordinary benefits of local self-government, it would not be reasonable and proper to order their annexation. When actual unity is impracticable, legal unity should not be attempted, but the incongruous communities should be left to independent control. In all cases, however, where actual unity is practicable, legal unity should be ordered as promising the greatest aggregate of municipal benefits."

The reasoning in the above quoted opinion seems to be good, and founded upon well defined principles and good sense.

The statute in question seems to have had in mind that counties should not be too much cut up or confused in boundaries by providing that no changes could be made which would leave the territory excluded separate and apart from and without the county of which it was formerly a part. This provision recognizes the difficulties which might arise in questions of jurisdiction and venue.

Your letter states in the case put by you that all of the territory is in compact form and the narrowest portions of it contiguous to the proposed boundary lines between the old and the new counties. Applying what has been stated to your case, I will say that if the proposed change in the boundary does not leave the portion of the old county set off from it and connected to it by only a narrow strip of territory, that such change would not be contrary to the meaning and spirit of the law. However, if such a change would have the effect of leaving a portion of the old county projected into the new county by a narrow strip of territory and without the general contour and borders of the old county in such a manner as to cause confusion in regard to the boundary lines and jurisdiction, I would say that such a change would be unreasonable and not within the meaning and intent of the legislature in allowing such a withdrawal.

Yours very truly,

D. M. KELLY,
Attorney General.