

**County Commissioner, Where County Is Divided. Division of County, Residence of Commissioner.**

Where a county is divided and the residence of one of the county commissioners is in the new county, such commissioner cannot hold his office in the new county, unless he has been elected or appointed.

December 6th, 1913.

Hon. C. R. Tisor,  
County Attorney,  
Miles City, Montana.

Dear Sir:

I am in receipt of your communication under date of the 2nd inst., asking for my opinion upon the following question:

"Under the new county act is it possible for a county commissioner who maintains his residence in the new county and who was elected as county commissioner of the old county to continue to hold the office of county commissioner of the new county?"

The provisions of Chap. 133, Session Laws of the Thirteenth Legislative Assembly, relating to this subject are as follows:

"Sec. 5. At the election provided for in Sec. 3 of this act, there shall be chosen such county, township and district officers as are now or may hereafter by general law be provided for in counties of the class to which said new county is determined to belong as herein provided."

This section excludes from this provision constables and justices of the peace, as well as school trustees.

Sec. 3 of said law provides in part as follows:

"All nomination of candidates for the offices required to be filled at said election shall be made in the manner pro-

vided by law for the nomination of candidates for all general state elections."

And that the ballot

"Shall also contain the names of persons to be voted for to fill the various elective offices designated in said proclamation for counties of the class to which said proposed county will belong."

In view of the above stated provisions of the law, that portion of Sec. 6 which provides that "it shall be the duty of the persons \* \* \* continuing to hold the office of county commissioner" is meaningless, since by the terms of the act a complete set of officers for the new county is directed to be elected. This is the apparent intent of the legislature, and they nowhere specifically provided that any county commissioner previously elected to office for an old county is to hold over as a commissioner for the new county. It is hard to conceive on what legal principle a man elected to office for one county would thereby become an officer of an entirely new and different county without election or appointment.

You are therefore advised that in my opinion it is impossible for a county commissioner who is elected as a county commissioner of an old county to hold office as a county commissioner for the new county without having been elected, as provided for in Sec. 5, Chap. 133, Session Laws of the Thirteenth Legislative Assembly of Montana.

Yours very truly,

D. M. KELLY,  
Attorney General.