

New Counties, Elections for. Primary Law, Application to Election for New County. New County, Officers of. Officers, of New County. County Commissioners, Upon Division of County. Official Bond, on Change of Class of County. Classification, of County.

As regulating amount of official bonds, the provisions of the Initiative Measure, No. 302, the primary law, applies to the election of officers upon the creation of a new county within the provisions of Chapter 112, Laws of 1911. Upon division of a county, a county commissioner who resides within the new county ceases to be a commissioner of the old county unless he removes within the limits of the old county.

A county commissioner who has qualified is not required to

file additional bond upon a county becoming one of a higher class unless required so to do by the district judge.

December 14th, 1912.

Hon. Wm. L. Ford,
County Attorney,
White Sulphur Springs, Mont.

Dear Sir:

I acknowledge receipt of your letter of the 11th inst., also the letter of Mr. W. C. Husband, deputy county attorney, of Harlowton, under date of December 10th, wherein you ask my opinion upon the following questions:

"1. Whether the provisions of the initiative measure No. 302, 'the primary election law' adopted by the people at the last election, would apply to the election of officers upon the creation of a new county within the provisions of Chapter 112, Laws of 1911?

"2. Does a county commissioner of Meagher County who has four years yet to serve of his term and who resides within the proposed new county become a commissioner of the new county and continue to serve out his unexpired term as commissioner of the new county?

"3. When a county is changed from a lower to a higher class, thereby increasing amounts of the official bond required of county officers, will a county commissioner who was elected and qualified when the county belonged to the lower class, and who will continue to hold office after the county becomes of the higher class, be required to put up an additional bond or is the original bond under which he qualified sufficient?"

In answer to your first question I would respectfully refer you to the provisions of the last two paragraphs of Section 3, of Chapter 112, Laws of 1911, which are as follows:

"All nomination of candidates for the offices required to be filled at said election shall be made in the manner provided by law for the nomination of candidates for all general state elections.

"The provisions of the election laws relating to preparation, printing and distribution of sample ballots and the provisions of said laws relating to primary elections in this state shall have application to any election provided for in this act."

By the provisions of the recently adopted primary law all general election nominations for public officers must be made in accordance with the provisions of that law, and in Sec. 8 thereof it is provided:

"And it shall not be allowed to nominate any candidate in the manner provided by Sec. 521, Revised Codes of Montana, 1907."

It is my opinion therefore that for the nomination of candidates for the offices required to be filled upon the creation of a new county the provisions of the recently enacted primary law would apply and it would be proper for the board of county commissioners in fixing

the amount of bond to be filed by the petitioners to take into consideration this fact.

In answer to your second question I will state that this matter has been heretofore passed upon by this office in an opinion dated December 18th, 1911, and addressed to one of the county commissioners of Chouteau County, wherein we held:

“Upon the formation of a new county the commissioners of any of the counties from which a new county is formed, who reside within the limits of the new county, cease to be a commissioner of the old county unless they remove within the latter.”

This opinion will be found in Vol. 4, Opinions Attorney General, at page 332, a copy of which will soon be supplied to your office.

Further in answer to your second question I would state that said Chapter 112, Laws of 1911, provides that officers for the proposed new county are required to be nominated in the manner provided by general law, which would, of course, include county commissioners, and in the event that any member of the present board of county commissioners of Meagher County desire to be nominated for the office of county commissioner in the new county, it will be necessary for him to receive the nomination in the manner provided by law, and to be elected to such office by a vote of the people.

In answer to your third inquiry, it is my opinion that the county commissioner of a county who has qualified would not be required to file an additional bond unless required so to do by the district judge under the provisions of Sec. 2884 of the Revised Codes of 1907.

ALBERT J. GALEN,
Attorney General.