

County Division, Amendment of Law Relating to. Law Relating to County Division, Amendment of. Petition, for County Division. Counter-Petition, County Division. Indian Reservation, Included in Counter-Petition.

A new county may be formed which contains an assessed valuation of not less than three millions. Under the Act, as amended, only fifty-one per cent of the votes cast is necessary to form such county.

Petitions heretofore presented to the county commissioners may be acted upon in the same manner as before the approval of the new act, the board being guided by the amendments.

A counter-petition must be in conformity with the requirements laid down.

Whether or not a portion of the territory to be withdrawn under the counter-petition is an Indian Reservation is entirely immaterial.

March 22nd, 1913.

Hon. D. W. Doyle,  
County Attorney,  
Conrad, Montana.

Dear Sir:

I am in receipt of your letter of the 17th instant, asking for an opinion from this office upon the following questions:

1. "In what way do the amendments change the law relating to the division of counties?"

2. "Does the law as amended apply to petitions that were presented to the board of county commissioners but not acted upon previous to the passage of the amended law?"

3. "Where a counter petition is presented to the board praying that a large area be withdrawn from the proposed new county and all the signers on the counter petition live in one part of the territory asked withdrawn and about twenty-five miles from the line of the proposed new and old counties, for instance in or near to a town in one corner of such territory and such signers constitute fifty per cent of the electors of the territory asked withdrawn, should the territory be eliminated from the proposed new county if the electors residing in the territory asked withdrawn and just adjacent to the old county, are desirous of remaining in the new county?"

4. "Can an Indian reservation which there are no qualified electors residing in be included in a counter petition?"

I have carefully examined the amended act about which you inquire, and so far as I am able to discover the only changes made in Chapter 112 of the Laws of the 12th Legislative Assembly are:

(a) Under the law as amended a new county may be formed which contains an assessed valuation of not less than three million dollars,

whereas, under the original act, such assessed valuation was required to be not less than four million dollars.

(b) When the final question of the formation of the new county is submitted to the voters, under the act as amended, only fifty-one per cent of the votes cast is necessary to form such new county, whereas, under the original act, sixty-five per cent of all votes cast was required. In all other respects, the act providing for the creation of new counties is unchanged, so far as I am able to note.

Answering your second question, I would say that, in my opinion, petitions heretofore presented to the board of county commissioners, but not acted upon as yet, may be acted upon by the board of county commissioners in the same manner as before the approval of the new act, subject, however, to the modifications before noted, and the board of county commissioners will be guided by the amendments before mentioned, and will disregard the requirements of the original act in so far as they are not in conflict with the requirements of the amended act. The original act is not revoked or repealed only in so far as the same is in conflict with the amended act, but the original act remains in force and effect in all respects except as modified by the amendments. It will not be necessary to initiate a new proceeding for the new county, because of any change in the law, but the proceedings heretofore initiated may be continued to be controlled hereafter by the provisions of the amended act, and not by the provisions of the original act, where such provisions are in conflict with the amendments.

Answering your third and fourth question, I would say that the counter-petition which seeks a withdrawal of certain territory from the proposed new county, must be in conformity with these requirements:

(a) The territory sought to be withdrawn, must be within and contiguous to the boundary line of the proposed new county, and must be contiguous to the boundary line of the old county.

(b) It must be signed by at least fifty per cent of the qualified electors of the territory sought to be withdrawn:

(c) The territory sought to be withdrawn must lie entirely within Teton county.

If the counter-petition meets with these requirements, then the board of county commissioners have no discretionary power in reference to the same, but must exclude such territory from the proposed new county, and must reform the lines of the proposed new county accordingly. If the exclusion of the territory described in the counter-petition reduces the valuation of the proposed new county to less than three million dollars, then such new county shall not be created or organized.

Under the statute, it seems to be immaterial whether a portion of the territory to be withdrawn described in the counter-petition contains qualified electors or not. Therefore, in my opinion, the question whether or not a portion of such territory was contained in an Indian reservation would be entirely immaterial.

If the territory contained in the Indian reservation is joined in the counter-petition with other territory upon which there resides qualified electors in a manner that is in compliance with the requirements herein

above indicated, then the whole of such territory so described in the counter-petition must be excluded from the proposed new county.

Trusting this will answer your inquiries, I am,

Very truly yours,

D. M. KELLY,

Attorney General.