

New County, Creation of. Valuation, of Old County Where
New County Is Created. County, Creation of New.

A new county cannot be lawfully created when it leaves an
old county with less than five million assessed valuation.

March 26th, 1913.

Hon. C. A. Linn,
County Attorney,
White Sulphur Springs, Montana.

Dear Sir:

I beg to acknowledge receipt of your communication under date of the 24th inst., advising me that after proceedings were instituted under the provisions of Chapter 112, Laws of 1911, for the creation of Wheatland county, to be formed out of portions of Meagher, Sweet Grass and Fergus counties, and after hearing on the petition by the board of county commissioners of Meagher county, and after the board had ordered that a special election be held on May 9th of this year for the purpose of voting on the question of creating Wheatland county, the county of Stillwater has been created out of a portion of Sweet Grass county, so that now, if Wheatland county is created the county of Sweet Grass will be left with an assessed valuation of less than five millions of dollars. You submit the following questions:

1. "Will the fact that Sweet Grass county will be reduced to less than \$5,000,000 assessed valuation, invalidate the creation of Wheatland county so that the holding of the election could be enjoined?"
2. "Do the provisions of the so-called Brower Bill amending Chap. 112, Laws of 1911, take effect immediately and apply to an election which was called under the provisions of Chap. 112, Laws of 1911, but the election not held until May 9, 1913?"

A question practically identical with the first one submitted by you was considered by this department in an opinion dated January 17, 1913, addressed to Honorable John L. Slattery, County Attorney, Glasgow, Montana, copy of which I herewith enclose. For the reasons stated in that opinion you are advised that if the creation of Wheatland county will reduce Sweet Grass county to an assessed valuation of less than five millions of dollars the county of Wheatland cannot legally be created, and the election for such purpose may, in my opinion, be enjoined by any party interested therein.

In reply to your second question I beg to advise that the so-called Brower Bill provides that it shall be in full force and effect from and after its passage and approval, and that all acts and parts of acts in conflict with it are repealed. The bill was approved by the governor on the 21st day of March, 1913. I am, therefore, of the opinion that all proceedings for the creation of a new county had subsequent to March 21, 1913, should be in conformity with the so-called Brower Bill. The Brower Bill, however, does not change the amount of the assessed valuation which must remain in the old county after the creation of the new county.

I am advised by the secretary of state that the laws of 1913 will be ready for distribution sometime in May.

Very truly yours,

D. M. KELLY,
Attorney General.