

**County Division, Collection of Taxes Upon. Taxes, Collection of Upon County Division.**

Held: That where a portion of Powell County was transferred to Missoula County, the taxes for the year 1915 upon the property transferred from Powell County to Missoula County should be collected and belong to Missoula County.

July 8, 1915.

Hon. T. F. Shea,  
County Attorney,  
Deer Lodge, Montana.

Dear Sir:

I am in receipt of your communication under date the 5th instant, stating that your Board of County Commissioners has requested you for an opinion:

“as to whether Missoula or Powell County would be entitled to the taxes for that portion of Powell County which by act of the recent legislature was transferred to Missoula County?”

The Act in question is Chapter 46 of the Laws of the Fourteenth Legislative Assembly. This question arises upon the determination of the exact date when the Act took effect. The second section of the Act, starts out by saying:

“From and after the enactment and approval of this Act, all of the territory described hereinabove shall be and become a part of Missoula County.”

The section then makes provision for the payment by Missoula County of a sum certain, stated to be the value of the property owned by Powell County in the territory transferred to Missoula County. A further proviso is put in that when “said payment has been made or satisfactorily arranged for, the county clerk of Powell County shall certify the fact of such payment to the county clerk of Missoula County, whereupon the property within said territory above described, shall be and become the property of Missoula County, and the territory hereinabove described shall be and become a part of Missoula County for all purposes.” Section 4 provides:

"This Act shall be in force and go into effect upon its passage and approval and upon a compliance with the terms contained in Section 2 hereof."

Payment was actually made under the terms of this Act on March 6, 1915, and it is contended that the Act did not become operative until that day, and that, therefore, the property in that portion of Powell County transferred, was in Powell County on the first Monday of March of this year, and therefore, taxable and assessable therein. There are two answers to this contention.

First. Chapter 46 was passed and approved by the Governor on February 27th, 1915, two days before the first Monday in March. Upon receiving the signature of the Governor it became a law, and was in force and effect. All that remained to be done was the drawing of the warrant, or providing for the payment of the sum fixed by the legislature in some other method, a ministerial act. Section 6197, provides as follows:

"That which ought to have been done is to be regarded as done, in favor of him to whom, and against whom, performance is due."

Applying this maxim, payment of the sum named was immediately due at the time of the signing of the Bill by the Governor, and in contemplation of law, was done. Consequently, the territory in question actually became a part of Missoula County before the first Monday in March. This contention assumes that the levy of taxes takes place upon the first Monday in March. This, as we shall see from the next point considered, is an erroneous assumption.

Examining the law upon the assessment and levy of taxes, we find that the assessment of property is treated in Chapter 3 of Title 12, Part 3 of the Code, while the levy of taxes is treated under Chapter 6 of Title 12 of Part 3. Furthermore, the assessment and levy are two different acts performed by different officers. Assessing is done by the assessor. The levy of taxes is done by the Board of County Commissioners. Also the time for doing these acts is different. Section 2510 provides:

"Assessor must, between the first Monday of March and the second Monday of July of each year, ascertain the names of all taxable inhabitants, and all property in his county subject to taxation, \* \* \* and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at twelve o'clock M of the first Monday of March next preceeding."

The levy of taxes, on the other hand, is not made until the second Monday of August of each year. Section 2590, Revised Codes of 1907.

"To assess and tax is to declare a tax to be payable. To levy it is to raise or collect it. There is a wide difference between taxes assessed and taxes levied, and no tax can be levied until the assessor's return is made and acted upon by the county court and the books placed in the hands of the collector."

Valle vs. Fargo, 1 Mo. App. 344.

Section 2850 Revised Codes, 1907, provides as follows:

“When a county is divided, or a boundary is altered, all taxes levied before the division was made, or a boundary changed, must be collected by the officers of, and belong to, the county in which the territory was situated before the division or change.”

Manifestly no levy of taxes had or could be made by Powell County previous to the enactment of Chapter 46, and the proceedings thereunder. It can not be said that any taxes were levied *before* the change in boundary. Not having been levied before the change, they could not be collected by the county from which the territory was taken.

I am, therefore, of the opinion that the taxes for the year 1915 upon the property transferred from Powell County to Missoula County, by Chapter 46, should be collected by, and belong to Missoula County.

Yours very truly,

J. B. POINDEXTER,

Attorney General.