

New County, Petition for. Petition for New County, Errors in. Errors in Petition, How Corrected. Board of County Commissioners, Quasi-Judicial.

The errors shown in the petition for creation of a new county, are such as may be corrected by a minute order of the Board of County Commissioners. The Board is clothed with quasi-judicial powers, and in acting upon petition for creation of new county, has jurisdiction beyond its own county.

January 30, 1915.

Hon. C. W. Chowning,
Chairman, Board County Commissioners,
Ennis, Montana.

Dear Sir:

I am in receipt of your letter of the 28th instant, setting forth that a petition has been presented to the Board of County Commissioners of Madison County, praying for the creation of a new county, to be known as Wilson County; that it is proposed to create the new county out of a portion of Gallatin, a portion of Jefferson, and a portion of Madison Counties, the largest territory to be taken from Madison,—hence the petitions are filed in Madison County; that two of the petitions contain errors similar in character, and you desire my opinion as to whether such errors be fatal.

The errors to which my attention has been directed, are that in each, the Gallatin and Madison County petitions, contain the following statement:

“The undersigned petitioners respectfully represent and show that they are duly qualified electors of that portion of the territory to be taken from the County of Gallatin, Montana, and included within and to be a part of the new county, hereinafter named, and that their names appear upon the official registration books of *Jefferson* County Montana, used at the last general election held in *Jefferson* County, on November third, 1914.”

The jurat to each petition states what you assert to be the true facts, namely that the names of the petitioners appear upon the official registration books of Gallatin and Madison Counties respectfully. I am of the opinion the errors indicated are not jurisdictional; that the use of the word “Jefferson” in each of these petitions is an inadvertance, due to typographical error, and being contrary to fact, is subject to correction, not, of course, by interlineation, or by changing the petitions to correspond to the facts, but in treating them as though the proper word in each instance was used. The county commissioners in acting upon matters pertaining to the creation of new counties, are clothed with quasi judicial powers and may determine the facts, and to this end may resort to whatever competent evidence is at hand, including the great register of voters.

State ex rel Lang, vs. Furnish et al, 48 Mont. 28.

If, therefore, upon examination of the great register of Gallatin and Madison Counties, it appears to the satisfaction of the commissioners that the petitioners are respectively registered in Madison and Gallatin Counties, and not in Jefferson County, a minute order should be made, reciting the fact, and this, in my opinion will cure the error.

You propound another inquiry, as to whether it is legal for the Board of County Commissioners of your county by proclamation to fix a date for the election of the new county matter, so as to be binding upon the people in the portions of Jefferson, and Gallatin Counties, proposed to be included in the new county? Specific authority to do such is conferred by the provisions of Section 3 of Chapter 133, Session Laws of 1913. It is true that by the terms of this Act, the Board of County Commissioners acting upon the petitions, is clothed with jurisdiction extending beyond its own county. This is a necessary power and is not unconstitutional. Counties are political divisions of the State, and except in so far as the legislature is restricted by the state constitution, are subject to legislative regulation and control.

Yellowstone County vs. First T. & S. Bank, 46 Mont. 439.

Yours very truly,

D. M. KELLY,
Attorney General.