

**Counties, Qualification of for Determining Various Offices.  
County Officers, Deposits of in Counties Where Assessed  
Valuation Is Reduced.**

The qualification of counties is determined by the Board of County Commissioners at the time provided for by Section 2975, Revised Codes of 1907, and a county once receiving a certain qualification retains it until it is legally and officially ascertained to have changed.

February 18, 1915.

Hon. Frank Hunter,  
County Attorney,  
Miles City, Montana.

Dear Sir:

I am in receipt of your communication under date the 15th instant, submitting for my opinion the question of whether Custer County.

a county of the third class, is deprived of the various deputy officers and assistants, provided for by law, for counties of that class, by the fact that a portion of the county has been cut off by the creation of Prairie County? As you have stated, there is a constitutional prohibition against changing the salary or term of an elective officer during his term of office.

Article V, Section 31 of the Constitution of Montana.

As you state in your letter and the attached schedule, the number of deputies allowed the various county officers are fixed by law, in accordance with the class of the county in which they serve. Section 2973, Revised Codes of Montana, 1907, classifies the counties of this State for the purpose of regulating the compensation and salary of all county officers and for fixing the penalties of officer's bonds by providing what the assessed valuation of the various classes shall be. The manner of determining what the assessed valuation is in a particular county is left to the Board of County Commissioners, and provision for their classifying the counties is made by Section 2975, Revised Codes, 1907, which is as follows:

"The several boards of county commissioners must, at their regular session in September, 1906, make an order designating the class to which such county belongs as determined by the assessed valuation of such county for the year 1906, under the provisions of this Act, and in each even numbered year thereafter; provided that such classification shall not change the government of the county then in existence until the first Monday in January next succeeding."

From this it will be seen that the class of a county is determined by the assessed valuation of such county for the year in which the classification is made. Chapter 133 of the Session Laws of the Thirteenth Legislative Assembly, otherwise known as the New Counties Act, makes no provision for the determination of the class of a county upon the creation of a new county from a portion of its territory. This situation leaves the matter of the determination of the class of a county, as is provided by Section 2975. The general rule in regard to such matters is that

"a county once having its status as to population settled, retains it until it is legally and officially ascertained to have changed."

Lewis vs. Lackawana Co., 200 Pa. 590; 50 Atlantic, 162.

In this case, the question was raised as to whether an officer was entitled to a salary because it appeared from the United States census that the county in which he held office had reached the population which would entitle its officers to be placed upon salary, and the court held that there must be a determination in such manner that the county had reached the class entitling its officers to salaries before such officers would be entitled to these salaries. I apprehend that the same rule should be applied in a case where the classification of the county is determined by assessed valuation instead of the population. This view of the matter is sustained by numerous cases.

Commonwealth ex rel Harding, 87 Pa. 343;

Commissioners of Converse Co. v. Burns, 29 Pac. 894;

Board of Commissioners vs. Henry, 126 Pac. 763;

Board of Commissioners vs. Mulholand, 136 Pac. 112.

Upon this view of the statute and authorities, I am of the opinion that Custer County must remain in the same class, and be entitled to the same officers as was determined by its Board of County Commissioners in September, 1914, notwithstanding the fact that since that date, certain territory which might reduce its assessed valuation has been included within a new county, until the Board of County Commissioners shall again determine its classification, in accordance with law.

Yours very truly,

D. M. KELLY,

Attorney General.