

Incorporation of Towns—Petitions for—Two Petitions for Same Purpose.

Where two petitions have been filed with the Board of County Commissioners for the incorporation of a town, the one first filed must be acted upon first, and unless a sufficient number of signers withdraw from the same so that it is without the required number of signatures, an election must be held on such petition.

January 24, 1917.

Hon. Stewart McConochie,
County Attorney,
Lewistown, Montana.

Dear Sir:

I am in receipt of your communication under date of the 8th inst. submitting for my opinion the following proposition:

“Where two petitions for the incorporation of the town of Grass Range, Montana, are filed with the County Commissioners of Fergus County, one on December 4th, 1916, and the other on December 30th, 1916; each of said petitions being legally sufficient to give the board of County Commissioners jurisdiction, and each of the said petitions containing the requisite number of qualified electors, the names of said electors not being identical on each petition; and where the territory described in both petitions is the same except that about sixty acres of territory included in the first petition is excluded from the second petition; and where on the first petition the County Commissioners made an order appointing a census taker; and where the second petition by its terms does not purport to be an amended petition but such is the intention of the incorporators; and where the incorporators desire to proceed upon the second petition, how shall the Board of County Commissioners dispose of the first petition in order that the proceedings for incorporation under the second petition will be valid, both petitions having been filed with the County Clerk?”

In my opinion the Board of County Commissioners must act on the petition first filed, if the same contains the required number of signatures, and call an election as required by law. The board has no authority or jurisdiction to act on the second petition until the first has been acted upon and submitted to the voters. McQuillin on Municipal Corporations, Vol. 1, page 337; State ex rel Osborn v. Mitchell, 22 Ohio Cir. Ct. 208.

Any signer to the first petition may withdraw therefrom at any time before the final action thereon by the Board.

The Supreme Court of this State in the case of State ex rel Long v. Furnish et al, 48 Mont. 28; 134 Pac. 297, said:

“And we think the rule well established that in the absence of legislative expression to the contrary, signers of a petition

have an absolute right to withdraw therefrom at any time before final action taken thereon.

"Indeed the above rule is a necessary inference from the very nature of the petition, and of necessity applies, not merely to petitions themselves, but to the withdrawals, so as to authorize a withdrawal of a withdrawal."

If, therefore, a sufficient number of the signers to the first petition withdraw their names, before final action by the board, so as to leave said petition without the required number of names, the board would be without authority to act, otherwise the board must act on the first petition as above indicated.

Respectfully,

S. C. FORD,

Attorney General.