

Initiative and Referendum—Referendum Petitions—New Counties—Method of Determining Number of Referendum Petitions In.

Method prescribed for determining the number of voters in new counties for the purpose of signing referendum petitions.

July 9th, 1919.

Mr. C. T. Stewart,
Secretary of State,
Helena, Montana.

Dear Sir:

You have requested that I advise you with reference to referendum petitions from new counties created since the general election in 1918 and which are filed for the purpose of referring Referendum Measure No. 13,

and particularly as to the manner or method by which you are to determine the number of signatures required on such petitions from these new counties.

The last session of the legislature created seven new counties: Garfield out of a part of Dawson County; Treasure County out of a part of Rosebud County; Glacier County out of a part of Teton County; Pondera County out of parts of Teton and Chouteau Counties; Roosevelt County out of a part of Sheridan County; McCone County out of parts of Sheridan and Richland Counties; and Powder River County out of a part of Custer County.

Under the initiative and referendum provision of the Constitution, Art. V, Sec. 1, the whole matter of votes cast for governor at the regular election last preceding the filing of any petition for the initiative or referendum shall be the basis on which the number of legal petitions and orders for initiative and referendum shall be filed with the Secretary of State, and the last regular election at which a governor was elected, being the general election held in 1916, the total vote cast for governor at that election is the basis on which petitions for referring Referendum Measure No. 13 shall be filed.

The county clerk in each of the old counties, portions of which have been included within these new counties, has in his custody a record of the canvass of the votes cast for governor at the general election in 1916, this record showing the total number of votes cast for governor in each precinct in such old county at such election. He also has a record, the minutes of the board of county commissioners, showing the boundaries of each election precinct as it existed in his county for such election. From the description of the boundaries of these old precincts and the description of the boundaries of the new county the county clerk can very easily ascertain and determine which of these old precincts is now included in the new county, and after determining which precincts are now included in the new county and the total number of votes cast in each of such precincts for governor at the general election in 1916, he can ascertain and determine the number of votes cast in the old county for governor and which would have been cast in the new county had the new county been in existence at the time of the general election in 1916. The only difficulty which may be encountered by the county clerk is when the dividing line between the old and the new county does not follow the boundary line of an old precinct but cuts through such old precinct so that a part of the territory in such old precinct still remains in the old county while a part of such territory is now in the new county. Even in such case, however, he can ascertain with reasonable certainty what votes cast from such precinct at the 1916 election were cast by electors residing in that portion still remaining in the old county and that portion now in the new county. The county clerk has the copy of the precinct register used at such election and the judges of election placed an "X" before the name of every elector voting at such election. Section 7 of Chapter 122, Session Laws 1915, the registration law, requires a card for each elector registering, on which must be stated his residence, post office, section, township and range. Section 18 requires the county clerk to prepare a poll book (copy of the official register for each election precinct) in which must be placed the information contained

on the cards required by Section 7. Knowing the particular portion of the old precinct now included in the new county the county clerk, by referring to the copy of the precinct register for 1916 can ascertain not only just what electors voted at such election, but their actual residence, and can thus determine just which of such electors resided in the portion of the old precinct still remaining in the old county and just which of such electors resided in that portion of the old precinct now included in the new county.

You should, therefore, instruct each of the county clerks of each of the old counties, portions of which have been included in new counties, to ascertain, in the manner indicated, the total number of votes cast for governor at the general election in 1916, by electors who resided in that portion of the old county which is now included in the new county, and certify the same to you. It may be possible, of course, that there may be a few instances where the residence is not so definitely stated that the county clerk can be absolutely certain whether the elector resided in that portion of the precinct still remaining in the old county, or in that portion now included in the new county. In such a case the county clerk should consider the elector as residing in the new county rather than in the old county. If there be any such instances the county clerk would hardly care to make an unqualified certificate that the number of votes cast in such old county by electors residing in that portion thereof now included in the new county, were a certain number, and I have, therefore, prepared a form of certificate which may be used by the county clerk in certifying the number of votes cast in the new county.

Respectfully,
S. C. FORD,
Attorney General.