

County Seat, Petition for Removal of—Removal of County Seat, Notice for How Made.

Upon the filing of a petition for the removal of a county seat, the county clerk must publish notice in each newspaper in the county to that effect and specify the date at which the hearing before the board of county commissioners will be had.

August 21, 1920.

Mr. C. E. Collett,
County Attorney,
Sidney, Montana.

Dear Sir:

I have your letter with reference to your telegram of the 5th inst., and my reply thereto, and must confess that from reading your letter I find that at the time of answering your telegram I did not understand the situation or the facts connected therewith.

I understand therefrom that the petition had been filed at a date more than sixty days before the regular September meeting, although not sixty days before the meeting on August 3, 4 and 5, and you desired to know whether the petition could be presented to the board the first time at the August meeting, although the notices had not been published, and although no action could be taken by the board at such August meeting. I now understand from your letter that the petition was not filed until July 31st, so that sixty days will not expire before the regular September meeting.

Section 2851, as amended by Chapter 10, Session Laws 1919, seems to require the petition to be twice presented to the board of county commissioners, the first presentation being at the first meeting after the filing thereof, and which must be at least sixty days before the second presentation to the board, at which time the board can take no action thereof, and the second presentation being at the first regular meeting of the board held after the expiration of sixty days from the date of the filing of the petition at which meeting, if proper notices of the filing have been published, the board may hear and consider the petition, examine the same in the manner provided by Section 2852, as amended, hear objections, consider withdrawals, etc., for Section 2851, as amended, contains the following very clear and plain language:

"The petition * * * *must be presented to the board of County Commissioners at least sixty days* prior to any action thereon being taken by the Board of County Commissioners, and action on said petition by the Board of County Commissioners must be had at a regular meeting of said Board of County Commissioners. Such petition must be filed with the county clerk, and the county clerk immediately upon the filing of said petition must cause to be printed in every newspaper published within said county a notice to the effect that a petition praying for the removal of the county seat has been filed with the county clerk, and that said petition is open to the inspection of any and all persons interested therein, *and that said petition will be presented to the Board of County Commissioners, at its next regular session for action thereon.*"

That under Section 2851, as amended, the petition is required to be twice presented to the Board of County Commissioners I do not believe can be questioned, as it says distinctly that the petition must be presented to the board at least sixty days prior to any action thereon being taken by the board, and then provides for notices of the filing of the petition to be published, in which notices it must be stated that the petition *will be presented to the board at its next regular meeting for action thereon.* And, as the petition must be presented to the board at least sixty days prior to any action thereon being taken by the board, and action thereon can only be had at a regular meeting sixty days after the first presentation to the board, it seems clear that the notices which the county clerk is required to publish have reference only to the second presentation at the regular meeting, held after sixty days have expired after the first presentation, at which meeting action

will be taken on the petition, and have no reference or application to the first presentation to the board when no action can be taken thereon.

Here it should be noticed that while Section 2851, as amended, does not require the petition to be presented the first time to the board of county commissioners at a regular meeting, simply saying that it shall be presented to the board at least sixty days prior to any action being taken thereon, such section does expressly provide that action thereon, meaning the examination, hearing, etc., provided for by Section 2852, as amended, can only be had at a regular meeting of the board. And, in this connection, it should be borne in mind that regular meetings of the board can only be held on the first Monday of each month, and each such regular meeting is limited to three days, except that the December meeting may continue for five days (Section 2891, as amended by Chapter 148, Session Laws of 1915.) Extra meetings or sessions may, however, be held on five days' notice. (Section 2891, as amended), and other sessions may be held when provided for by law or by the board. (Section 2892.) The regular meetings or sessions, however, are those which are held on the first Monday in each month, the extra sessions authorized by Section 2891 as amended, and the other sessions authorized by Section 2892 not being regular meetings or sessions.

It is, therefore, my opinion that the provisions of Sections 2851 and 2852, as amended by Chapter 10, Session Laws of 1919, must be construed as follows:

The petition must be filed with the County Clerk, and it then becomes his duty to present it to or lay it before the board at its first meeting, whether a regular, extra or other meeting, held thereafter, and to publish a notice in each newspaper published in the county, stating that such petition has been filed and that it will be presented to the board at a regular meeting, which must be named and specified in the notices, and which must be the first regular meeting of the board held after the expiration of sixty days from the date of the meeting at which the petition is first presented to the board, and, at the regular meeting so named and specified in said notices, the board must proceed to examine the petition, hold hearing thereon, etc., as provided in Section 2852, as amended.

Applying the facts, as stated in your letter, and the law as above construed, to the petition in question, it appears that the petition was filed with the clerk on July 31st. The county clerk should have immediately prepared for publication and sent out notices to each newspaper published in the county that the petition would be presented to the board for action thereon, at its regular meeting on Monday, October 4th, and should have presented the petition to the board at its regular meeting which should have been held on Monday, August 2nd. At the regular meeting on October 4th, the board should take up, examine and consider the petition, hold its hearing thereon, and otherwise proceed as provided in section 2852, as amended.

Respectfully,

S. C. FORD,

Attorney General.