

Counties, New—Indebtedness—Created by Special Act—Record Books—Property of Which County—Personal Property—School Districts — Joint — Adjustment Board—Taxes, Delinquent—Collection—Seed Grain Bonds.

1. Where a county is created by a special Act, the adjustment of the indebtedness should take place as of the date provided in the Act.
2. A record book containing public records is not to be considered as property belonging to the original county. It is to be considered the property of such county in adjusting
3. Personal property belonging to the original county the indebtedness of the new and old counties.

4. Where, by the formation of a new county, a division of a school district is effected, there is no question for the Adjustment Board to consider.

5. The Act creating Roosevelt county provides that delinquent shall not be considered in adjusting the indebtedness, but shall share in same as collected.

6. Where seed grain bonds are issued, the new county is entitled to receive its pro rata share of tax collected.

March 25, 1919.

Hon. John Hurly,
Judge District Court,
Glasgow, Montana.

My Dear Judge:

By a special act of the Sixteenth Legislative Assembly, Chapter 23 of the 1919 Session Laws, which became a law on February 18, 1919, Roosevelt County was created embracing territory located wholly in Sheridan County. Our Supreme Court in State ex rel. Ford v. Schofield, 53 Mont. 502, 165 Pac. 594, held that the creation of a county by a special act of the Legislative Assembly was not unconstitutional. Sections 5 and 6 of the Act creating Roosevelt County are as follows:

"Section 5. That all the indebtedness of Sheridan County, as the same shall exist on the first day of January, 1919, shall be apportioned between the County of Sheridan and the County of Roosevelt by first taking from said indebtedness the amount of all moneys on hand and the amount of all money belonging to said Sheridan County, and also deducting the value of all real and personal property within or belonging to the said Sheridan County on the first day of January, 1919, and the remainder of said indebtedness shall be apportioned between the respective counties in proportion to the amount of taxable property in Sheridan County and the taxable property in Roosevelt County, and heretofore within the boundaries of Sheridan County; said amount of taxable property to be ascertained and said apportionment and valuation of the County property to be made by a commission consisting of the Board of County Commissioners of Sheridan County and of Roosevelt County, and the Judge of the Seventeenth Judicial District of the State of Montana, which said commission shall meet at the Court House in the town of Plentywood, on the second Tuesday of March, 1919, and shall take as a standard for said apportionment of said indebtedness the assessment of the year 1918, as determined by the Board of Equalization of said Sheridan County.

"Section 6. That the treasurer of said County of Sheridan, shall, at the time of the adjustment as provided in Sections 5 and 6 of this Act, make out and submit to the County Commissioners of Roosevelt County, a list of all delinquent taxes and amounts uncollected within the limits of Roosevelt County

as defined above, provided that no delinquent taxes due the County of Sheridan shall be considered in the adjustment of the debt as herein above provided, but it shall be the duties of the Treasurer of Sheridan County to collect such delinquent taxes as shall be due said County and to turn over within thirty days after the making of such collections to the Treasurer of Roosevelt County, a pro rata share of such taxes as he shall be able to collect.

"It is further provided that should there be a surplus of funds in the hands of the Treasurer of Sheridan County after the adjustment hereinbefore provided, said surplus shall be divided between the respective counties of Sheridan and Roosevelt in the same manner as herein provided for dividing the indebtedness."

In connection with the adjustment of the indebtedness of Sheridan County between the new County of Roosevelt and the old County of Sheridan, by a commission consisting of the Boards of County Commissioners of Sheridan and Roosevelt Counties, and yourself as Judge of the Seventeenth Judicial District, as provided in Section 5 of the Act, you have requested my opinion upon several questions. The first question which you have presented is whether the adjustment shall be made as of January 1, 1919, the date fixed by the Act, or as of February 18, 1919, the date the Act became effective, or as of the date of the adjustment by the commission. In Douglas County v. Grant County, 72 Wash. 324, 190 Pac. 366, it was held that where a special act of the Legislature creating a new county out of a part of an existing county and requiring the new county to pay to the old county its portion of the latter's indebtedness, is complete in itself, and was enacted subsequent to a general law providing for the apportionment of debts and property in case of a division of counties, the adjustment of the property rights of the two counties would be governed by such special Act. As the Act creating Roosevelt County provides for such adjustment and the basis therefor, such special Act must govern. In 15 Corpus Juris, 408-9, it is said:

"In apportioning the rights and liabilities of counties on an alteration of their boundaries, the legislature is, as in all other cases, subject to the restrictions imposed by the organic law. However, a constitutional provision relating to the apportionment of property and debts between old and new counties is held not to be an enlargement or grant of power, but rather a restriction and limitation on the power of the legislature."

Also in 7 R. C. L. 933, it is said:

"As the rule for the apportionment of the debts and property between the two counties upon division belongs exclusively to the legislature, and not to the courts, it follows that when the legislature had determined how the debts and property shall be divided and apportioned the courts cannot interfere."

Section 3 of Article XVI of the Constitution of this State provides in part as follows:

"In all cases of the establishment of a new county it shall be held to pay its ratable proportion of all then existing liabilities of the county or counties from which it is formed, less the ratable proportion of the value of the county buildings and property of the county or counties from which it is formed."

The following quotations are from the case of Los Angeles County v. Orange County, 97 Cal. 329, 32 Pac. 316:

"Counties are merely local subdivisions of the state, created by the legislature for governmental purposes, and are denominated 'public corporations' for the reason that they are but parts of the machinery employed in carrying on the political affairs of the state. The legislature, except as restrained by constitutional limitations, may change their boundaries and extent, consolidate two or more into one, or divide and create new counties out of the territory of one or more previously existing ones. It has been established by an unvarying line of decisions that, upon the creation of a new county out of the territory of another, the legislature, in the absence of constitutional restrictions, may make such provision with reference to the public property and debts, or their division, as to it may seem just, and that, in the absence of any provision in reference thereto, the old county will be entitled to retain all public property and assets, except such public buildings and structures as lie within the territory of the new, and will also be liable for all its prior obligations. Hampshire v. Franklin, 16 Mass 86; Laramie Co. v. Albany Co., 92 U. S. 307; Depere v. Bellevue, 31 Wis. 120; Hughes v. Ewing, 93 Cal. 414, 28 Pac. Rep. 1067; Dill. Mun. Corp. pages 188 and 189. Article II, paragraph 3, of the constitution of this state, provides that 'every county which shall be enlarged or created from territory taken from any other county or counties shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken.' The mode of determining the 'just proportion' of the debts and liabilities for which the new county shall be liable is not prescribed in the constitution, but is left to the determination of the legislature in each particular case."

"As the legislature could divide the public property and assets of the county in such mode as it might choose, it was competent for it to fix upon any date which it might select as the time for ascertaining their amount and value, as well as for determining, in connection therewith, the 'just proportion' of the debts and liabilities to be assumed by the new county. In the present instance the legislature fixed the time when the act took effect as the proper period for ascertaining the amount of the assets and liabilities; and it cannot be held that the constitutional provision was violated in selecting that as the point of time at which to properly determine what would be a 'just proportion' of the debts and liabilities to be assumed by the new county."

In this case it was held that the County of Orange was not chargeable with moneys expended on its territory by the County of Los Angeles between the date of the Act and the organization of Orange County. This case was expressly followed in the case of Tulare County v. Kings County, 117 Cal. 195, 49 Pac. 8, in which the court said on page 10:

"Again, the constitution does not state to whom the liability for a just proportion of the debts of the old county shall be payable. It does not state when the liability shall begin or end, so as to guide the courts in determining what liabilities are to be deemed existing. It does not declare any rule by which to establish a basis of apportionment, whether upon an assessment for the year preceding the division or the year of the division, or some subsequent assessment to be made for that special purpose. It provides no machinery by which any such basis could be ascertained by the courts. It leaves the consideration of the value of the public property remaining in the old county entirely out of view, and this consideration alone might fully justify the imposition of the entire debt of the old county on that county alone. It would seem to me, if the courts should undertake to determine this question upon the authority of the constitution alone, they would have neither compass nor rudder by which to be guided."

In the Act creating Sweet Grass County, House Bill No. 17, approved March 5, 1895, Fourth Session Laws pages 54 to 58, it was provided that the county commissioners of Sweet Grass County should meet with the county commissioners of each of the other counties from which Sweet Grass County was created for the purpose of adjusting the indebtedness between the new county and each of the other counties, and it was provided that the meeting with the county commissioners of Park County should be held on March 11, 1895. In Holliday v. Sweet Grass County, 19 Mont. 364, 48 Pac. 553, it was held that Sweet Grass County was liable for interest upon this portion of the debt of each county until it issued its warrant in payment for that portion. It will be noted that in this case the adjustment was made as of the date of the meeting of the commissioners and that the Act stated that the indebtedness should be adjusted as of the first day of March, 1895, while the Act went into effect on March 5, 1895, but the question which you have presented was not raised in this case, the only question being that of the payment of interest. In view of the two California cases above, I am unwilling to state that the adjustment of the indebtedness between Sheridan and Roosevelt Counties should be made as of any other date than that expressly provided in the Act creating Roosevelt County, January first, 1919.

Another question which you have presented is whether or not the public record books of Sheridan County are to be considered as property belonging to said Sheridan County and deducted from the indebtedness of Sheridan County, within the meaning of Section 5 of the Act. You have directed my attention to the case of State ex rel. Mountrail County v. Amundson, (N. D.), 135 N. W. 1117, in which it was held

that there should be deducted from the indebtedness of the old county the amount expended by such old county in the purchase of record books for use in its various county offices, it appearing that such record books are permanent record books now in the various county offices of the old county and in which valuable records are contained. This decision was based upon the provisions of Section 2336 of the Revised Codes of N. D., which provides that a new county shall assume and pay a just proportion of the indebtedness of the county from which it is created, such proportion being computed upon a certain specified basis, and that from the total outstanding indebtedness of the original county certain deductions should be made, among others "the amount of outstanding bonds given or money paid for public property owned by and remaining within the limits of the original county." You will notice that in the Act creating Roosevelt County it is provided that there shall be deducted from the total indebtedness of Sheridan County, not the amount of money paid or bonds issued for property of the county, but the value of all real and personal property within or belonging to the said Sheridan County. In *State ex rel. Furnish v. Mullenore*, 53 Mont. 109, 161 Pac. 949, the Court said on page 113:

"By referring to the statute defining the functions of the commissioners (Sec. 7), we do not find any statement as to what shall be considered property of a county, nor any enumeration classifying the items to be considered by them. True, the phrase 'property belonging to the old county,' and similar expressions employed therein, would seem to refer only to property owned by a county in its proprietary capacity, as distinguished from that in which it has only a qualified interest as trustee for the general public, such as public highways and the like."

Of course the public record books of Sheridan County are valuable to Sheridan County and contain therein valuable information, but such information has been and is valuable not only to the inhabitants of Sheridan County, but also to the inhabitants of Roosevelt County. It seems to me that it can hardly be said that Sheridan County owns such public record books in its proprietary capacity but rather that such books are for the general public and that the county has only a qualified interest as trustee. I cannot conceive of any standard by virtue of which the value of such record books could be computed. It seems to me that after a county has purchased a record book and written upon its pages records of deeds, mortgages and other instruments affecting title to real estate, or has transcribed the proceedings of its Board of County Commissioners, that it ceases to possess any value as a blank record book, but is rather a public record for the benefit of the public at large. Of course any blank record books owned by Sheridan County have a value in themselves and might be considered as property of the county to be deducted from its indebtedness.

Another question which you have presented involves the disposing of the personal property owned by Sheridan County, such as road machinery and equipment, which is now within the boundaries of Roosevelt County where it was left at the completion of work last fall. It seems

to me that this matter is covered by Section 5 of the Act which provides for the deduction from the indebtedness of Sheridan County of the value of all real and personal property within or *belonging to* the said Sheridan County, and that Sheridan County should retain the title to the same, as far as the adjustment of the indebtedness between the two counties is concerned. In this connection see Washington County v. Weld County, 12 Colo. 152, 20 Pac. 273, in which it was said:

"In the absence of restrictive constitutional or statutory provision on the subject, when a new county is created by segregating a portion of the territory belonging to an existing county, the old county retains all assets previously owned by it, including right of action, funds and other personal property; also all real estate held in proprietary right, save such, if any, as may be within the territory taken away; it likewise remains bound by its existing contracts, and is subjected to the burden of discharging all existing obligations and liabilities. The new county receives none of the assets, and assumes none of the burdens. Cooley, Tax'n, 176, note 2; Larame Co v. Albany Co., 92 U. S. 307; Mount Pleasant v. Beckwith, 100 U. S. 514.

The reasons for the foregoing doctrines are that the title to all property and ownership of all assets are vested in the old county as a corporate entity, this entity being in no way disturbed by the division of its territory and separation from it of a portion thereof; while, on the other hand, all existing obligations and liabilities were incurred in its corporate capacity and name."

You have further called attention to the fact that the creation of Roosevelt County has worked a division of certain school districts. I do not believe that this is a matter with which the adjustment board need deal. We have in this State many joint school districts caused by the creation of new counties, and the trustees of such joint districts manage the district, its funds and property as though such district were located in one county, except that taxes are paid to the County Treasurer of the county in which the property is located and then the trustees draw warrants upon the County Treasurers of both counties.

You have also called my attention to the provisions of Section 6 of the Act creating Roosevelt County with reference to the collection of delinquent taxes. This section provides that the delinquent taxes due the County of Sheridan shall not be considered in the adjustment of the indebtedness but that the County Treasurer of Sheridan County shall collect such delinquent taxes as shall be due Sheridan County, whether on property in Sheridan County or Roosevelt County and within thirty days after making such collection, the County Treasurer of Sheridan County shall remit to the County Treasurer of Roosevelt County the pro rata share of such tax as he shall be able to collect, such pro rata share to be computed upon the basis provided in Section 5. It seems to me that this would include not only the share of the delinquent taxes collected upon property in Roosevelt County but also the pro rata share of all delinquent taxes due Sheridan County, for the reason that none

of such delinquent taxes due Sheridan County are considered in the adjustment. The term "property" as used in acts apportioning liabilities and property on the creation of new counties, is generally held to include delinquent taxes. 15 Corpus Juris 410. But the Act creating Roosevelt County expressly provides that the amount of delinquent taxes due Sheridan County shall not be considered in the adjustment but that Roosevelt County shall share in such delinquent taxes as they are collected.

Another matter to which you have directed my attention is that of seed grain bonds issued by Sheridan County pursuant to the provisions of Chapter 19 of the Extraordinary Session Laws of the Fifteenth Legislative Assembly. These bonds are county bonds and constitute an indebtedness of the entire county, to the payment of which the full faith and credit of the entire county are pledged. See *Hamilton v. Board of County Commissioners*, 54 Mont. 301, 169 Pac. 729. These bonds should therefore be considered an indebtedness of Sheridan County. By the provisions of Section 25 of the above-mentioned Chapter 19, under which these seed grain bonds were issued, if the amount due the county, together with interest is not paid by the 20th day of October, it is made the duty of the County Treasurer to enter the amount of such indebtedness upon the tax rolls of the county for that year as a tax upon all property, real and personal, which is described in the contract between the individual and the county for the purchase of the seed grain as being subject to the lien thereof, which tax is collected at the time and in the same manner as other taxes are collected, and if such tax becomes delinquent the property is sold for delinquent taxes in the regular manner. By the provisions of House Bill No. 106 the Board of County Commissioners were authorized to grant an extension of time for the payment of this indebtedness to the county. Although this indebtedness might not be considered as a tax within the ordinary meaning of that term for the purpose of the support of the government of the county, yet I believe that it should be considered as a tax within the meaning of Section 6 of the Act creating Roosevelt County, and upon the payment of such taxes or indebtedness to Sheridan County, Roosevelt County should be entitled to receive its pro rata share of the amount so collected, regardless of the location of the property upon which such tax is a lien.

I have not had the opportunity to go into these several matters as fully as their importance demands, because of the lack of time, and if I may be of further service to you in connection with any of these matters, I would be glad to have you advise me.

Respectfully,

S. C. FORD,

Attorney General.