

Herd District—Whether Lands Embraced in District May be Included in Another District.

Land embraced within a herd district cannot be included within another district without a dissolution of the old district.

M. L. Parcels, Esq.,
County Attorney,
Columbus, Montana.

My dear Mr. Parcels:

You have requested an opinion from this office upon the following question:

“Can the County Commissioners consider a petition for the creation of a new herd district embracing land contained within the territory of a district formed under Chapter 74, Laws of 1917, and make the new district effective twelve months in the year, as it is provided may be done under Chapter 167 of the Laws of 1919? If not, is there any way in which status of portions of all the land within district formed under the provisions of that chapter can be changed so as to make the district effective for the twelve months of the year?”

Section 1 of Chapter 74 of the Laws of 1917 provides, in part, as follows:

“Herd districts may be created in any county in the State of Montana to contain Seventy-two (72) square miles or more, lying not less than three miles in width, outside of incorporated cities, upon petition of owners or possessors of fifty-five per cent of the land in such districts; * * * provided that such herd districts may be abolished at any time upon proceedings as hereinbefore set forth for the establishment of such herd districts.”

This chapter was amended by Chapter 167 of the Laws of 1919. Section 2 of this chapter provides, in part, as follows:

“Herd Districts may be created in any county in the State of Montana to contain fifty-four square miles or more, lying not less than three miles in width, outside of the incorporated cities, upon petition of owners or possessors of fifty-five per cent of the land in such district, and providing twenty-five per cent or more of the land in such district is in actual cultivation, and such petition shall designate the months of the year when herd district is effective, and upon presentation and filing of such petition properly signed giving outside boundaries and description of proposed district and the postoffice address of the signers thereto, with the Clerk and Recorder in the county in which the said district is being created, the County Commissioners of such county, upon re-

ceipt therefor, shall set a date for hearing protests, * * *
* provided that such herd districts may be abolished at any
time upon proceedings as hereinbefore set forth for the es-
tablishment of such herd districts."

A district created under the provisions of Chapter 74 of the Laws of 1917 would continue in existence and its boundaries could not be changed except to include contiguous and adjoining territory as provided in Chapter 167 of the Laws of 1919. There being no provision of law for changing its boundaries so as to include any part of it in another district, the County Commissioners would be without jurisdiction to change the boundaries by including part of the land in another district.

It is an elementary principle of law that County Boards have only such powers as are expressly given by statute, or such as are necessarily implied from those expressly given. (*Yegen v. Board of County Commissioners*, 34 Mont. 79). To permit a portion of a district already created to be included in another district would be equivalent to abolishing the district in a manner not provided by the statute. Since by this method part of it could be included in one district and the remainder in another, and so large a portion could be cut off as to leave the remainder incapable of functioning as a district, it would follow that the only method of accomplishing the purpose aimed at in your question would be to dissolve the old district and form a new one. It would seem that there could be no objection to both petitions being circulated and presented at the same time, having the one to dissolve acted upon first and the other immediately presented to the Commissioners, so that you would have a new district immediately in existence at the date of the expiration of the old.

From the foregoing it would necessarily follow that the status of portions of the district could not be changed except in the manner indicated.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.