

Adjustment Commission—Counties—Indebtedness.

Where an Adjustment Commission has filed its report as required and finally adjourned it is without power or authority to reconvene and reopen the case upon its own motion.

Chas. F. Huppe, Esq.,
County Attorney,
Roundup, Montana.

My dear Mr. Huppe:

You have requested my opinion whether the Commission appointed to adjust and settle the indebtedness between the counties of Musselshell and Golden Valley, upon the creation of the last named county, can be reconvened for the purpose of correcting the adjustment relating to steel bridges, the said Commission having completed its duties and adjourned in 1920.

This Commission was appointed under the provisions of what is now Section 4397, R. C. M. 1921, and made its determination as provided by Section 4398, and took into consideration, in making the adjustment of indebtedness, the value of "all steel bridges which may have been constructed and in use for a less period than ten years," as provided in that section.

Since the adjustment of indebtedness between the counties of Musselshell and Golden Valley was completed in 1920, the supreme court of this state, in the case of State ex rel. Judith Basin County vs. Poland, et al., decided December 19, 1921, and reported in 61 Mont. 600, 203 Pac. 352, held that bridges were a part of the public highway and were not county property that could be considered in adjusting the indebtedness between the old and new counties, inasmuch as the county has not that absolute control and disposition of them essential to ownership as understood at the time the Constitution was adopted.

It now appears that if the said Commission can reconvene and correct its findings to comply with the law as declared in State etc. vs. Poland supra, -Golden Valley county will be found to be further indebted to Musselshell county in a considerable amount.

In the case of State ex rel. Furnish vs. Mullendore, 53 Mont. 109, 114, the court in speaking of the powers and duties of the Commission said: "When the Commissioners had filed their report in duplicate * * *, their power, so far as they could voluntarily act, ceased to exist." Therefore, the only way in which the Board could be reconvened would be by appropriate judicial process.

In the case of State ex rel. Cascade County vs. Poland, et al., 213 Pac. 800, an attempt was made to compel the reconvening of the Commission and a correction of the findings by striking certain items therefrom. The court refused to issue the writ of mandate on the grounds that the plaintiff was guilty of laches, but at the same time sustained the contention of the plaintiff that the items as to steel bridges and bridge and highway funds should not have been taken into consideration in the settlement, thus approving the rule laid down in the case of State ex rel. Judith Basin County vs. Poland, supra.

The settlement between Cascade county, Fergus county and Judith Basin county was completed in March, 1921, and in February, 1922, the two old counties accepted warrants from Judith Basin county in settlement of the amounts found due by the Board of Adjustment.

It is my understanding that, in your case, Musselshell county has likewise accepted the settlement with Golden Valley county in accordance with the findings of the Board of Adjustment and the case is, therefore, practically a parallel with the Cascade county case above cited.

It is, therefore, my opinion that a writ of mandate would not lie to compel a reconvening of the Board, and a correction of the findings made at this late date, over the objection of Golden Valley county,

as the question of laches could be raised by that county in the same manner as it was raised by Judith Basin county in the case of Cascade County vs. Poland, supra, and that the said Board is without power or authority to reconvene and reopen the case on its own motion.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.