

Claims—Counties — County Commissioners — Indebtedness—Lake County—New Counties—Assessment Roll.

Where a new county is created by a division of an old county the old county cannot charge the new one for making up the assessment roll for that portion of the old county included in the new unless such charge is provided for by the Legislature.

Geo. T. Farrell, Esq.,
Chairman Board of County Commissioners,
Polson, Montana.

My dear Mr. Farrell:

You have submitted to this office for my opinion the following proposition: Flathead county has presented to the County of Lake a claim for the cost of making up the 1923 assessment roll for that portion of Flathead county now included in Lake county. The bill amounts to about \$700.00. You wish an opinion as to whether Lake county is liable to Flathead county for this charge.

You state that it is the opinion of the Board of County Commissioners of your county that Lake county is not responsible for this charge. I agree with your conclusion. There is no provision of the statute for making a charge of this kind. The rule with respect to division of indebtedness, where a county has been divided, is stated in the leading case of Laramie County v. Albany County, 92 U. S. 307, where the Court said:

“Regulations upon the subject (division of indebtedness) may be prescribed by the Legislature; but, if they omit to make any provision in that regard, the presumption must be that they did not consider that any legislation in the particular case was necessary. Where the Legislature does not prescribe any such regulations, the rule is that the old corporation owns all of the public property within her new limits, and is responsible for all debts contracted by her before the act of separation was passed. Old debts she must pay, without any claim for contribution; and the new subdivision has no claim to any portion of the public property except what falls within her boundaries, and to all that the old corporation has no claim.”

No charge can be made in the instant case for the reason that the Legislature has not considered that the additional services required of the officer, after the creation of the new county, justify additional compensation and hence have made no provision for paying it.

It is, therefore, my opinion that this claim is not a proper charge against Lake county.

Very truly yours,
WELLINGTON D. RANKIN,
Attorney General.