

Counties—New Counties—Indebtedness.

In the absence of any constitutional or statutory provisions to the contrary the legislature possesses power to transfer territory from one county to another without making provision for an adjustment of indebtedness between the counties concerned.

Fergus county is not entitled to an adjustment of indebtedness from Petroleum county by reason of the transfer of territory by the legislature from the former to the latter county.

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County Attorney,
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April 16, 1925.

My dear Mr. Matson:

You have requested an opinion whether Fergus county is entitled to any adjustment of indebtedness from Petroleum county by reason of the transfer by the last session of the legislature of some thirty-six sections of land from the former to the latter county.

Section 3 of article XVI of the constitution of Montana provides 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: provided that nothing in this section shall prevent the re-adjustment of county lines between existing counties."

You will observe that the constitutional limitation regarding the payment of a "ratable proportion of liabilities" is confined to cases of the establishment "of a new county." The last proviso of the article above quoted seems to me to indicate an intent on the part of the framers of our organic law to permit "the re-adjustment of county lines" without a pro rata distribution of indebtedness.

Section 4390, R. C. M. 1921, provides for a pro rata apportionment of existing debts and liabilities in case a county shall be enlarged or created from the territory taken from another county. This section, however, is applicable only to cases where counties have been created or divided by petition and election and it has no relation to cases involving the creation or change of counties by direct legislative action.

In the absence, therefore, of any constitutional or statutory limitation has the legislature power to detach territory from one county and add it to another without making some provision for the adjustment of indebtedness between the counties involved? The weight of authority answers the question in the affirmative.

The rule is stated in 15 C. J., 408, as follows:

“Where a portion of the territory of one county is annexed to another, the county gaining territory neither acquires any rights nor comes under any obligations to the county losing it, unless the legislative act so provides.” (Citing authority.)

An analogous question was also considered by this office in vol. 8, opinions of the attorney general, pages 72 to 79. The authority therein cited on page 75 from the case of Los Angeles County vs. Orange County, 32 Pac. 316, and Washington County vs. Weld County (Colo.) 20 Pac. 273, is equally applicable to the question presented by your inquiry. It seems settled by the authorities above cited that the legislature possesses the authority to disregard all apparent equities and to transfer territory from one county to another without making any provision for a ratable adjustment of obligations and liabilities between the counties affected.

Very truly yours,

L. A. FOOT,
Attorney General.