

**Highways—Statutes Construed, Chapter 106 of the Session Laws of 1917 and Chap. 17 of the Session Laws of 1917.**

Held that Chap. 172, Session Laws of 1917, repeals Chap. 106, Session Laws of 1917 and Sec. 13 of Chap. III of Chap. 172, Session Laws of 1917 construed.

July 31, 1917.

Mr. C. E. Carlson,  
County Attorney,  
Bozeman, Montana.

Dear Sir:

I am in receipt of your letter of June 20th in which you submit, for my opinion, several questions with reference to the highway laws.

The first question is whether Chapter 106 of the Session Laws of 1917, was amended by Section 12 and 13 of Chapter III of Chapter 172 of the Session Laws of 1917.

Section 12 of Chapter III of Chapter 141, Session Laws of 1915, authorized and empowered the board of county commissioners, by order, to direct the County Surveyor, or both the County Surveyor and some member or members of the board, to inspect the condition of **any construction work** on any highway or bridge in the county, before payment therefor, while Section 13 provided for the payment of the per cent and expenses of the County Surveyor and members of the board of county commissioners for making such inspections.

By Section 1 of Chapter 106, Session Laws of 1917, approved February 28th, 1917, Section 12 of Chapter III of Chapter 141, Session Laws of 1915, was amended so as to authorize and empower the board of county commissioners to direct some member or members of the board, or the County Surveyor, to inspect the condition of **any highway or any work contract, or otherwise**, being done on any highway or bridges in the county, and to approve any such inspection made without the same having been ordered by the board.

By Section 12 of Chapter 141, Session Laws of 1915, the board could only order an inspection to be made of **contract construction work** being done on any highway or bridge, and the board could order the inspection of any such contract construction work to be made either by the County Surveyor or by the County Surveyor and some one or more members of the board, but as this section was amended by Section 1 of Chapter 106 of the Session Laws of 1917, the board could order the inspection of **any highway, or any work, contract, or otherwise** being done on any highway or bridge, by either any one or more members of the board or by the County Surveyor, or if such inspection was made without a previous order of the board, the board could, at the first regular meeting of the board after such inspections approve the same.

By Chapter 172, Session Laws of 1917, approved March 15, 1917, all of Chapters I, II, III and IV of Chapter 141, Session Laws of 1915,

were amended. Section 12 of Chapter III of Chapter 141, Session Laws of 1915, as amended by Section 12 of Chapter III of Chapter 172, Session Laws of 1917, authorizes and empowers the board of county commissioners to direct the County Surveyor or some member or members of the board to inspect the condition of any proposed highway, or highway, or work on any highway or bridge in the county during the progress of the work, and before payment therefor, and provides for the payment of per diem of members of the board and the County Surveyor making such inspections.

It will thus be seen that Section 1 of Chapter 106, Session Laws of 1917, and Section 12 of Chapter III of Chapter 172, Session Laws of 1917, both attempt to amend Section 12 of Chapter III of Chapter 141, Session Laws of 1915.

It is a rule of statutory construction that where two amendatory statutes are passed at the same session of the legislature, neither of which refers to the other, they will both be held to be effective, unless the amendatory portions are irreconcilable.

State ex rel. Hay, Jr. v. Hindson, 40 Mont. 353; 106 Pac. 332.

And in Lewis' Sutherland on Statutory Construction, Vol. 1, Section 273, the rule is laid down as follows:

"Where a law is amended and re-enacted as amended any intermediate law inconsistent with the new matter introduced or change made by the amendment will be repealed."

While the legislature by Chapter 106, Session Laws of 1917, only intend to legislate on the particular matter to which Section 12 of Chapter III of Chapter 141, Session Laws of 1915, had reference, yet by Chapter 172, Session Laws of 1917, it seems clear that it was the intention of the legislature to cover the entire subject covered by Chapter III, Session Laws of 1917.

I am therefore of the opinion that Chapter 106, Session Laws of 1917, has been repealed by Chapter 172, Session Laws 1917, and that in the inspection of highways and bridges, and work thereon, the board of county commissioners must be governed by the provisions of Section 12 of Chapter 172, Session Laws of 1917, and that all such inspections must be made by direction of the board, and that inspections made without a proper order of the board cannot be approved at the next or any subsequent meeting of the board.

Your next question is as to the meaning of Section 13 of Chapter III of Chapter 172, Session Laws of 1917.

This Section provides that when the County Surveyor and any member or members of the board act jointly in making any inspection, if such inspection is made without any prior order, they must, at the next regular meeting of the board, make proper entries of such inspection.

Section 12 of Chapter III of Chapter 141, Session Laws of 1915, authorized and empowered the board to direct, by order, the County Surveyor, or both the County Surveyor and some member or members of the board to inspect the condition of any contract construction work on any highway or bridge. This provided either for an inspection by the County Surveyor and some member or members of the board.

However this section as amended by Section 12 of Chapter III of Chapter 172, Session Laws of 1917, provides for an inspection, on order of the board, either by the County Surveyor alone, or by some member or members of the board, and does not provide for any joint inspection by the County Surveyor and some member or members of the board. Neither is there any provision made any place in Chapter III of Chapter 172, Session Laws of 1917, for any joint inspection by the County Surveyor and some member or members of the board. The only provision made for a joint inspection by the County Surveyor and a member of the board is found in Section 4 of Chapter IV of Chapter 172, and that section has reference only to the County Surveyor and some one member of the board acting as viewers when a petition is filed to establish, change or discontinue a common or public highway.

I am, therefore, of the opinion that Section 13 is only applicable to inspections made of a proposed highway by the County Surveyor and a member of the board acting as viewers, as provided in Section 4 of Chapter IV, and that it has no application to inspections made of highways or work on any highway or bridge under the provisions of Section 12 of Chapter III.

Respectfully,

S. C. FORD,

Attorney General.