

**Highways—Federal Aid—State Highways.**

House bill 241 does not remove state highways in Silver Bow county from the control of the highway commission nor affect the jurisdiction of said commission over federal aid road projects nor prevent the expenditure of federal aid moneys thereon.

State Highway Commission,  
State Capitol Building,  
Helena, Montana.

May 2, 1927.

Gentlemen:

You have requested my opinion on the two following questions:

“I. Does house bill 241 operate to remove from the control of the highway commission state highways within Silver Bow

county, thereby preventing the expenditure of federal aid therein in future?"

"2. If the first question must be answered in the affirmative, does this prohibition exist with respect to all state highways in Silver Bow county, or would state highways within the corporate limits of the city of Butte be excluded, and the commission still have authority over such highways within the city?"

House bill 241 is entitled: "An Act Relating to the Office of County Surveyor of all Counties Having a Total Registered Vote of Twenty-three Thousand or Over at the Last General Election, Defining the Powers and Duties of County Surveyor, and Abolishing the Office of Road Supervisor."

Section 1 of the act reads in part as follows:

"The County Surveyor of all counties having a total registered vote of twenty-three thousand (23,000) or over, at the last general election shall have exclusive control, supervision and direction of all highways, bridges and causeways within his county."

There is nothing whatever, either in the title or body of the above act to evidence a legislative intent to affect, in any manner, the authority of the said highway commission over state highways or to alter the relation existing between the state and the federal government with respect to the federal aid highway act. The sole purpose of house bill 241 was to transfer to the county surveyor a certain portion of the control over county roads and bridges theretofore exercised by the county commissioners of counties of the class of Silver Bow.

In my opinion the act itself, unaided by any other legislation passed by the twentieth legislative assembly of Montana sufficiently indicates its purpose as above stated. If, however, we examine the supplemental legislation passed by the same session the purpose of house bill 241 is still further made apparent. The same session of the legislature passed house bill 118 (chapter 18, session laws 1927) in which it divided the state into road districts and prescribed the manner in which the moneys of the state highway fund should be expended by the state highway commission for the construction of roads. The act contained the following language:

"All moneys of the State Highway Fund shall be used and expended by the State Highway Commission in the construction, reconstruction, betterment, maintenance, administration and engineering on the said highway system of highways in this State, selected and designated under the provisions of the Federal Aid Act approved July 11, 1916, and the Federal Highway Act approved November 9th, 1921, and all amendments thereto."

Likewise, at the same session a complete new gasoline license tax law (house bill 119, chapter 19, session laws 1927) was enacted. This act was similar in its general plan to initiative measure 31, the three cent

gasoline license tax law adopted by the people at the election of November 2, 1926.

Both the initiative measure and chapter 19, session laws 1927 contained language identical with that above quoted, authorizing the expenditure by the state highway commission of moneys collected under the act in the administration of the federal aid system of highways in this state.

In the light of the above contemporaneous enactments, and in view of the evident purpose of house bill 241, as indicated by its title and the body of the act, it is my opinion that said bill does not operate to remove from the control of the highway commission, state highways within Silver Bow county or elsewhere, nor does said act affect in any manner whatsoever the jurisdiction of the state highway commission in the administration of federal aid projects nor prevent the expenditure of federal aid thereon.

Very truly yours,

L. A. FOOT,

Attorney General.