

**Fish and Game Commission — Purchases — Contracts —
Real Estate.**

The provisions of section 287, R.C.M. 1921, as amended by chapter 17, laws of 1925, do not apply to the state fish and game commission but section 3668, R.C.M. 1921 still governs the letting of contracts by the commission. There is no specific procedure governing the purchase of real estate but the commission has authority to purchase the same under section 3653, R.C.M. 1921. Members of the commission cannot be interested in contracts let by the commission.

Mr. R. N. Hawkins,
Assistant State Examiner,
Helena, Montana.

February 11, 1932.

My dear Mr. Hawkins:

You have requested my opinion on the following questions:

“1. Relating to authority to purchase, is the state fish and game commission subject to the provisions of section 287, R.C.M. 1921 as amended by chapter 17 of the 1925 session laws?

“2. Do the provisions of article 5 section 30 of the constitution of Montana apply to the state fish and game commission?

“3. Relating to contracts, is the state fish and game commission subject to the provisions of chapter 149 of the 1927 session laws or does section 3668, R.C.M. 1921, only apply in reference to letting contracts?

“4. Relating to the purchase of real property, is the state fish and game commission subject to any specific procedure when purchasing real estate, and, if any, what are the necessary steps?

“5. With respect to interest in contracts, are members of the fish and game commission subject to the provisions of section 444, R.C.M. 1921, relating to interest in contracts, and section 7581, R.C.M. 1921, which defines sales? If one is a sales representative of a corporation that sold supplies to the state fish and game department and another is a member of a firm or

co-partner, or one in the corporation that sold supplies to said department, do such parties come under the provisions of said sections 444 and 7581 of the R.C.M. 1921?"

In answer to your first two questions, will say that in an opinion of this office (vol. 11, p. 326) it was held that the authority of the board of examiners over claims of the fish and game commission was limited to the examination of such claims to ascertain the correctness of the claim and whether it was a legal and valid charge against the state of Montana, and that under the provisions of section 3653 R.C.M. 1921 the fish and game commission has exclusive authority to expend the moneys placed in its control for the protection, preservation and propagation of fish, game, fur-bearing animals, and game and non-game birds. Therefore, the provisions of section 287, R.C.M. 1921, as amended by chapter 17, laws of 1925, and the provisions of article V, section 30 of the state constitution do not apply to the state fish and game commission.

In answer to your third question, will say that while chapter 149, laws of 1927 provides for the manner in which state contracts should be let it does not repeal section 3668, R.C.M. 1921 by implication for the reason that the latter section deals with a specific subject, to-wit, the fish and game commission, and it is therefore my opinion that section 3668, supra, still governs with reference to letting contracts by the commission in question.

In answer to your fourth question will say that there is no specific procedure governing the commission's action in the purchase of real estate but it is allowed to purchase the same under the general authority given it by section 3653 above mentioned.

In answer to your fifth question, it is my opinion that the members of the fish and game commission are subject to the provisions of section 444, R.C.M. 1921 and are therefore prohibited from having any interest in contracts made by the commission of which they are members and this would apply in cases of sales made by a member of the commission who is a sales representative of the corporation that sells supplies to the commission, providing, of course, that the member receives a commission or other remuneration on the sale but would not apply if such member was not interested financially in the transaction.

It would also apply where a member of the commission is a member of the firm or co-partnership selling supplies to the commission. In the case of a member of the commission, who is a stockholder in a corporation, selling supplies to the commission a strict interpretation of the statute would prohibit the commission from contracting with such corporation. However, where such member is not actively interested in the management of the corporation but simply a stockholder along with others of the investing public I am inclined to the opinion that the courts would not construe this to be such an interest as contemplated by the statute.

Very truly yours,
L. A. FOOT,
Attorney General.