

Opinion No. 251**County Commissioners—Bridges, Repair
of—Bids, Advertising for—
Emergency—Highways.**

HELD: Chapter 8, Laws of 1933, does not require a board of county commissioners to advertise for bids either for the materials or the work of repairing a bridge damaged by fire, where the board considers it a case of emergency, and by the unanimous consent of all its members, the board may proceed forthwith to repair said bridge.

June 23, 1933.

You have set forth facts concerning the steel bridge across the Missouri River at the mouth of Trout Creek, the floor of which bridge was burned recently. According to the facts which you present, it would seem that they constitute an emergency. You inquire "do the provisions of Chapter 8, Laws of 1933, require the advertisement by the county commissioners for bids for the work of repairing the Trout Creek bridge, or for the purchase of the lumber necessary to make such repairs?"

Section 1705, R. C. M. 1921, provides for the construction or repair of bridge costing more than \$200.00, and Section 1706 provides for the letting of the contract. The last two sentences of the last named section, read as follows: "The contract and bond for its performance must be entered into and approved by the said board, except in case of great emergency, and by the unanimous consent of all its members. The said board may proceed at once to construct, replace, and repair any and all structures of whatever nature without notice." As these two sentences are punctuated, they hardly make good sense. In checking over the history of this section, I find in the codes of 1895 (Section 2813) that these two sentences read as follows: "The contract and bond for its performance must be entered into and approved by the board, except in cases of great emergency, and by the unanimous consent of all its members, the board may proceed at once to construct, re-place or repair any and all structures of whatever nature without notice."

The same language and punctuation was used when this chapter was

amended in 1903. (See Chapter 44, Section 78, page 88, Laws of 1903). The same punctuation and language appears as Section 1414 R. C. M. 1907. The first change in punctuation appeared in the 1913 Session Laws. (Section 4 of Chapter 5, page 154). This latter punctuation was carried into the 1921 Codes as appears above. According to the punctuation in the 1921 Codes, the next to the last sentence appears unintelligible and the last sentence would give the county commissioners power to act in all cases regardless of whether there is an emergency or not. Inasmuch as there have been no other changes in these two sentences, except with the addition of the word "said" before the word "board" and the word "or" has been changed to the word "and" before the word "repair," it is my opinion that the insertion of the period instead of the comma after the word "members" was an inadvertence and that the legislature intended that the county commissioners should have additional powers only in cases of emergency and by unanimous consent of all its members. Considering the two sections together, it is only reasonable to suppose that the legislature would grant the commissioners greater power in cases of emergency.

Under the provisions of these two sections, I am therefore of the opinion that the board of county commissioners of Lewis and Clark County, if they consider this a case of an emergency, may, by unanimous consent of all its members, proceed at once to construct, replace and repair the said bridge.

In 59 C. J. 989, the general rule in regard to punctuation, is stated as follows: "Punctuation is no part of a statute and cannot control its construction against the manifest intent of the legislature, and the court will punctuate or disregard punctuation as may be necessary to ascertain and give effect to the real intent."

There is no express repeal or amendment of Sections 1705 and 1706, supra, as there is no reference to them or to the subject-matter covered by them either in the title or Section 1 of Chapter 8, Laws of 1933. In the title, reference is made to the "purchase of automobiles, trucks, vehicles, road, highway or other machinery, apparatus, appliances, equipment, materials, and supplies." Section 1 reads in part: "No

contract shall be entered into by a board of county commissioners for the purchase of any automobile, truck, or other vehicle, or road, highway; or other machinery, apparatus, appliances or equipment, or materials, or supplies of any kind. * * *." Evidently the words "materials, supplies, and supplies of any kind," being general words following particular words, refer to things of the same general nature or class as those enumerated, or must be construed in connection with the words with which they are associated. (See Sections 579, 580 and 581, 59 C. J. p. 979 et seq.)

It has been generally held that repeal by implication is not favored and that the legislature in enacting a statute, acted with full knowledge of existing statutes relating to the same subject, and where express terms of repeal are not used, the presumption is always against an intention to repeal an earlier statute, unless there is such inconsistency or repugnancy between the statutes as to preclude the presumption. (59 C. J. 905; 59 C. J. 909 et seq.)

In view of the heavy duties imposed on the county commissioners with reference to roads and bridges, their consequent responsibilities in case of failure or neglect to discharge them, and the serious consequences resulting to the public generally from the destruction of bridges and the failure to immediately repair them, I cannot escape the conclusion that if the legislature had intended to repeal or amend Sections 1705 and 1706, it would have clearly expressed its intention to that effect.